

Memorandum 2016-25

Fish and Game Law: Specific Types of Animals

The Commission¹ is presently studying a proposed recodification of the Fish and Game Code. The Commission has provisionally decided to organize the content of the new proposed Fish and Wildlife Code along these lines:

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Hunting, Trapping, and Fishing Generally
 - Part 1. General Provisions
 - Part 2. Hunting
 - Part 3. Trapping
 - Part 4. Fishing Generally
 - Part 5. Sport Fishing
 - Part 6. Commercial Fishing and Related Activity
- Division 6. Types of Animals
 - Part 1. Birds
 - Part 2. Mammals
 - Part 3. Fish
 - Part 4. Reptiles
 - Part 5. Amphibians
- Division 7. Biodiversity
- Division 8. Management of Public Lands and Facilities
- Division 9. Pollution Prevention and Response
- Division 10. Miscellaneous Provisions

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

The attached draft presents provisions that would be included in the statutory parts within Division 6 that address specific types of fish, invertebrates, amphibians, and reptiles.

Consistent with previous practice in this study, the staff has taken a fairly conservative approach in preparing the attached draft. Much of the language used in the draft is drawn verbatim from existing law. Where minor revisions to a provision have been proposed (typically to conform to standard legislative drafting practices, update cross-references, make nonsubstantive stylistic changes, or correct clear defects), the corresponding Comment, which will be included in any final recommendation, reports that the proposed provision continues the former provision “without substantive change.”² Although summary, this Comment is important, as courts have generally treated Commission Comments as evidence of legislative intent with regard to legislation enacted on the Commission’s recommendation.

In some instances, the staff has proposed to significantly restate an existing provision, in order to improve its clarity. In those instances, a “Staff Note” following the restated provision sets out the existing language for comparison. The draft also includes Staff Notes that invite public comment on other questions about the meaning, effect, expression, or organization of the law. Staff Notes are intended to be temporary, and will not be included in any final recommendation.

As with previously presented drafts in this study, the staff is not yet recommending that the draft language be approved for inclusion in a tentative recommendation. Instead, the draft is being presented for an initial evaluation by the Commission, and as a prompt for public comment. Once the Commission has had a chance to offer any concerns or suggestions about the draft and consider any public comment that it might eventually receive, the staff will present the language in a more finished form, reflecting any decisions that the Commission has made, for inclusion in a tentative recommendation.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code.

2. See Memorandum 2015-12, pp. 10-11; Minutes (Apr. 2015), p. 5.

HEADING PROMOTION

Under the current organization of the proposed law, provisions relating to each broad class of animal (i.e., birds, mammals, fish, etc.) would be placed within separate statutory parts within “Division 6. Types of Animals.”

In preparing the attached draft, the staff found that this approach did not leave enough heading levels for a sensible organization of the fish provisions.

To address that problem, the attached draft deletes the heading for proposed “Division 6. Types of Animals,” and promotes the part headings relating to each broad animal class so that each are division headings.³

This change would result in the following new division-level organization of the proposed code (with italics showing the key changes):

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Hunting, Trapping, and Fishing Generally
- Division 6. Birds*
- Division 7. Mammals*
- Division 8. Fish*
- Division 9. Invertebrates*
- Division 10. Amphibians*
- Division 11. Reptiles*
- Division 12. Insects*
- Division 13. Biodiversity
- Division 14. Management of Public Lands and Facilities
- Division 15. Pollution Prevention and Response
- Division 16. Miscellaneous Provisions

Is that change to the heading structure acceptable?

BIFURCATION OF FISH PROVISIONS

Many of the provisions that apply to specific types of fish are located in a statutory part of the Fish and Game Code that has expressly limited application. With regard to those provisions, existing Fish and Game Code Section 7600 provides as follows:

3. Existing Fish and Game Code Section 45 defines the term “fish” to include both invertebrates and amphibians. For increased clarity, the draft proposes to separate the provisions governing invertebrates and amphibians from the provisions governing finfish.

7600. The provisions of this part apply to the taking and possession of fish for any commercial purpose. This part does not apply to activities governed under Division 12 (commencing with Section 15000).

Because the proposed organization would separate and distribute provisions currently governed by Section 7600 to numerous different locations in the proposed law (according to the type of fish governed), there is no simple way to continue the existing application of Section 7600 in the proposed law.

The attached draft would therefore continue the application of Section 7600 by dividing each fish-specific part of the proposed law into two titles:

- Title 1. [Fish] Generally. This title would contain any provisions relating to that fish that currently *are not* governed by Section 7600.
- Title 2. Commercial Provisions. This title would contain any provisions relating to that fish that currently *are* governed by Section 7600. The title also begins with a section that states the application of Section 7600 to the provisions of that title.

In order to provide for standardized organization and encourage the continuation of that organization into the future, even if one of these two titles in a fish-specific part presently contains no provisions, the titles above would still be included in the draft legislation, and identified as “[*Reserved*].” Thus:

Division 8. Fish
Part 7. Catfish
Title 1. Catfish Generally [*Reserved*]
Title 2. Commercial Provisions

and

Division 9. Invertebrates
Part 2. Abalone
Title 1. Abalone Generally
Title 2. Commercial Provisions [*Reserved*]

If provisions are ever added to a reserved title in the future, the heading could be revised to remove the bracketed last word.

Is that approach acceptable?

SIGNPOSTING

The attached draft includes three types of signpost provisions.

The first is an acknowledgement that a specific type of animal falls within a regulated class of animals. For example:

27350. For the purposes of Part 2 (commencing with Section 25050), a salmon is an anadromous fish.

This direction is important, because the existing code contains some provisions expressly applicable to *groups* of fish (i.e., anadromous fish, groundfish, invertebrates, crustaceans, and mollusks).⁴ Fish that are part of these groups would therefore be also governed by these provisions, in addition to provisions governing that specific fish.

That type of signposting was approved by the Commission at a prior meeting, in connection with provisions that govern mammals.⁵

The second type of signpost would make clear that a statutory part containing provisions governing a specific type of animal is not intended to be exclusive; provisions located elsewhere in the proposed law may also apply to that type of animal. Thus:

28500. The provisions of this part are not intended to be exclusive. Other provisions that govern sardines include, but are not limited to, the following provisions:

...

These signpost provisions are needed because of the practical impossibility of aggregating *all* provisions of the existing code governing a specific animal in one statutory part. That issue is discussed in the next section of this memorandum.

Finally, the draft contains a general disclaimer of this type, at the beginning of each division:

25000. Animals governed by this division are also governed by other provisions of this code, including but not limited to Division 5 (commencing with Section 5000).

Division 5 is the part of the proposed code that contains provisions on hunting, trapping, and fishing generally.

Are these uses of signposting acceptable?

4. See, e.g., existing Sections 8046.1 (which would be continued by proposed Section 26315), 8500 (which would be continued by proposed Section 30610).

5. See First Supplement to Memorandum 2014-48, p. 4; Minutes (Oct. 2014), p. 5.

EXCEPTION TO GENERAL APPROACH OF AGGREGATING ANIMAL-SPECIFIC PROVISIONS

The attached draft mostly follows a previous decision of the Commission that provisions governing a specific type of animal should be grouped together, to simplify finding all of the law on that type of animal in one place.⁶

The draft deviates from that practice in a minority of cases. This was done in instances where excising and relocating an animal-specific provision from a broader code section would either disrupt a coherent regulatory scheme,⁷ or would require massive duplication of redundant language.⁸ Existing code sections where excision and relocation would present these problems are listed in each animal's "nonexclusivity" provision, discussed above. For example:

§ 25500. Provisions not exclusive

25500. The provisions of this part are not intended to be exclusive. Other provisions that may govern bass include, but are not limited to, the following provisions:

(a) Section 7361.

6. See First Supplement to Memorandum 2014-48, pp. 1-3; Minutes (Oct. 2014), p. 5. See also Memorandum 2015-12; Minutes (Apr. 2015), p. 5.

7. For example, existing Section 7361, which contains several animal-specific references that have been highlighted in bold, provides:

7361. (a) Fees received by the department from the sale of the Bay-Delta Sport Fishing Enhancement Stamp or validation shall be deposited in a separate account in the Fish and Game Preservation Fund. The Bay-Delta Sport Fishing Enhancement Stamp or validation shall not be required, and no fee shall be collected, as of January 1, 2010.

(b) **The department shall expend the funds in that account for the long-term, sustainable benefit of the primary Bay-Delta sport fisheries, including, but not limited to, striped bass, sturgeon, black bass, halibut, salmon, surf perch, steelhead trout, and American shad.** Funds shall be expended to benefit sport fish populations, sport fishing opportunities, and anglers within the tidal waters of the San Francisco Bay Delta and the main stem of the Sacramento and San Joaquin Rivers, including major tributaries, below the most downstream dam, and consistent with the requirements of the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3), the ecosystem restoration component of the CALFED Programmatic Record of Decision dated August 28, 2000, and applicable commission policies.

(c) It is the intent of the Legislature that these funds be used to augment, not replace, funding that would otherwise be allocated to Bay-Delta sport fisheries from the sale of fishing licenses, the California Bay-Delta Authority, or other federal, state, or local funding sources.

8. For example, existing Section 10664 provides:

10664. In the Laguna Beach, Newport Beach, Point Fermin, South Laguna Beach, Niguel, Irvine Coast, and Doheny Beach Marine Life Refuges, the following fish, mollusks, and crustaceans may be taken under the authority of a sportfishing license as authorized by this code: abalone, lobster, rockfish (Scorpaenidae), greenling, ling cod, cabezon, yellowtail, mackerel, bluefin tuna, kelp bass, spotted sand bass, barred sand bass, sargo, croaker, queenfish, corbina, white seabass, opaleye, halfmoon, surfperch (Embiotocidae), blacksmith, barracuda, sheephead, bonito, California halibut, sole, turbot, and sanddab. Fin fish shall be taken only by hook and line or by spearfishing gear. All other fish and forms of aquatic life are protected and may not be taken without a written permit from the department.

- (b) Section 7856.
- (c) Section 8385.
- (d) Section 8436.
- (e) Section 8436.5.
- (f) Section 10664.
- (g) Section 10667.

Determining whether to leave a fish-specific provision in its current context, rather than removing it from that context and locating it with other provisions addressing the same type of fish, involves a case-by-case judgment call. **Is the Commission comfortable granting the staff discretion to make those kinds of judgments? If not, how would the Commission like to handle this issue?**

CONCLUSION

The attached draft represents an initial attempt to consolidate existing commercial fishing provisions. There may be other provisions that should be located with those materials. If the staff discovers any similar provisions as this study proceeds, they can be added to the title presented in this draft.

The staff welcomes public comment on all issues raised in the draft.

In addition, the staff would appreciate comment on whether any of the provisions included in the attached draft present the kinds of problems with consistency, redundancy, or ambiguity as to program authority or funding sources that the Commission has been tasked with addressing.⁹ Because the Commission does not have significant historical experience analyzing fish and game law, it is important that subject matter experts assist in identifying such problems as the Commission proceeds through the code.

Respectfully submitted,

Steve Cohen
Staff Counsel

9. See 2014 Cal. Stat. res. ch. 63.

FISH AND WILDLIFE CODE

Staff Note: This is a preliminary staff draft of a proposed reorganization of specified provisions of the former Fish and Game Code.

Statutory cross-references that cannot yet be adjusted (because the referenced provisions have not yet been reorganized) are set out in boldface type, for later attention.

A draft of an official Commission “Comment” follows each proposed section. Such Comments will be included in any final recommendation. They serve to indicate the source of each section and to describe how it compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation. For guidance on the terminology used in Commission Comments, see the Comment following proposed Section 20 (attached to Memorandum 2013-12).

There is a “disposition table” at the end of this document. It summarizes, in tabular form, the disposition of every provision that has been included in this draft. If an existing provision would be repealed as unnecessary, the table indicates that provision as “omitted.”

Some provisions of this draft may be followed by a “Staff Note.” Staff Notes are intended to be temporary and will not be part of the Commission’s final recommendation. They serve to flag issues requiring special attention or treatment.

The Commission welcomes public comment on any issue relating to the content of this draft. The Commission is particularly interested in comments on any of the following matters:

- (1) Responses to any questions posed in “Staff Notes.”
- (2) Any inconsistency, obsolescence, ambiguity, or problems relating to program authority and funding, whether *within* the provisions of this draft or *between* the provisions of this draft and other provisions of law.
- (3) Provisions that should have been included in this draft but were not (or provisions included in this draft that should have been located elsewhere).
- (4) Technical drafting errors.

Comments should be directed to Steve Cohen at scohen@clrc.ca.gov.

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DIVISION 1. GENERAL PROVISIONS

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PART 2. DEFINITIONS

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§ 352. “Finfish”

352. “Finfish” means any species of bony fish or cartilaginous fish.

Comment. Section 352 is new. It is drawn from Section 1.46 of Title 14 of the California Code of Regulations.

§ 488. “Native California trout”

488. “Native California trout” means any of the following fish:

- (a) California golden trout.
- (b) Coastal cutthroat trout.
- (c) Coastal rainbow trout/steelhead.
- (d) Eagle Lake rainbow trout.
- (e) Goose Lake redband trout.
- (f) Kern River rainbow trout.
- (g) Lahontan cutthroat trout.
- (h) Little Kern golden trout.
- (i) McCloud River redband trout.
- (j) Paiute cutthroat trout.
- (k) Warner Valley redband trout.

Comment. Section 488 continues former Fish and Game Code Section 7261 without substantive change.

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DIVISION 6. BIRDS

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DIVISION 7. MAMMALS

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DIVISION 8. FISH

PART 1. GENERAL PROVISIONS

§ 25000. Provisions not exclusive

25000. Animals governed by this division are also governed by other provisions of this code, including but not limited to Division 5 (commencing with Section 5000).

Comment. Section 25000 is new.

§ 25005. Scope of commercial provisions

25005. The provisions of this division that are expressly identified as commercial provisions apply to the taking and possession of fish for any commercial purpose. Those commercial provisions do not apply to activities governed by **Division 12 (commencing with Section 15000)**.

Comment. Section 25005 continues the part of former Fish and Game Code Section 7600 applicable to the provisions of this division without substantive change.

PART 2. ANADROMOUS FISH

TITLE 1. ANADROMOUS FISH GENERALLY

CHAPTER 1. PRELIMINARY PROVISIONS

§ 25050. Provisions not exclusive

25050. The provisions of this part are not intended to be exclusive. Other provisions that may govern anadromous fish include, but are not limited to, the following provisions:

(a) **Section 14001.**

(b) **Chapter 7 (commencing with Section 15600) of Division 12.**

Comment. Section 25050 is new.

CHAPTER 2. SALMON, STEELHEAD TROUT, AND ANADROMOUS FISHERIES PROGRAM ACT

§ 25100. Title

25100. This chapter shall be known and may be cited as the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act.

Comment. Section 25100 continues former Fish and Game Code Section 6900 without change.

1 § 25105. Definitions

2 25105. Unless the context clearly requires a different meaning, the following
3 definitions govern the construction of this chapter:

4 (a) “Production” means the survival of fish to adulthood as measured by the
5 abundance of the recreational and commercial catch together with the return of
6 fish to the state’s spawning streams.

7 (b) “Program” means the program for protecting and increasing the naturally
8 spawning salmon and steelhead trout of the state provided for in **Article 3**
9 **(commencing with Section 6920)**.

10 **Comment.** Subdivision (a) of Section 25105 combines and continues former Fish and Game
11 Code Sections 6910 and 6911 without substantive change.

12 Subdivision (b) combines and continues former Fish and Game Code Sections 6910 and 6912
13 without substantive change.

14 § 25110. Legislative findings

15 25110. The Legislature, for purposes of this chapter, finds as follows:

16 (a) According to the department, the natural production of salmon and steelhead
17 trout in California has declined to approximately 1,000,000 adult chinook or king
18 salmon, 100,000 coho or silver salmon, and 150,000 steelhead trout.

19 (b) The naturally spawning salmon and steelhead trout resources of the state
20 have declined dramatically within the past four decades, primarily as a result of
21 lost stream habitat on many streams in the state.

22 (c) Much of the loss of salmon and steelhead trout and anadromous fish in the
23 state has occurred in the central valley.

24 (d) Protection of, and an increase in, the naturally spawning salmon and
25 steelhead trout resources of the state would provide a valuable public resource to
26 the residents, a large statewide economic benefit, and would, in addition, provide
27 employment opportunities not otherwise available to the citizens of this state,
28 particularly in rural areas of present underemployment.

29 (e) Proper salmon and steelhead trout resource management requires
30 maintaining adequate levels of natural, as compared to hatchery, spawning and
31 rearing.

32 (f) Reliance upon hatchery production of salmon and steelhead trout in
33 California is at or near the maximum percentage that it should occupy in the mix
34 of natural and artificial hatchery production in the state. Hatchery production may
35 be an appropriate means of protecting and increasing salmon and steelhead in
36 specific situations; however, when both are feasible alternatives, preference shall
37 be given to natural production.

38 (g) The protection of, and increase in, the naturally spawning salmon and
39 steelhead trout of the state must be accomplished primarily through the
40 improvement of stream habitat.

41 (h) Funds provided by the Legislature since 1978 to further the protection and
42 increase of the fisheries of the state have been administered by the department in a

1 successful program of contracts with local government and nonprofit agencies and
2 private groups in ways that have attracted substantial citizen effort.

3 (i) The department's contract program has demonstrated that California has a
4 large and enthusiastic corps of citizens that are eager to further the restoration of
5 the stream and fishery resources of this state and that are willing to provide
6 significant amounts of time and labor to that purpose.

7 (j) There is need for a comprehensive salmon, steelhead trout, and anadromous
8 fisheries plan, program, and state government organization to guide the state's
9 efforts to protect and increase the naturally spawning salmon, steelhead trout, and
10 anadromous fishery resources of the state.

11 **Comment.** Section 25110 continues former Fish and Game Code Section 6901 without
12 change.

13 **§ 25115. Legislative policy declarations**

14 25115. The Legislature, for purposes of this chapter, declares as follows:

15 (a) It is the policy of the state to significantly increase the natural production of
16 salmon and steelhead trout by the end of this century. The department shall
17 develop a plan and a program that strives to double the current natural production
18 of salmon and steelhead trout resources.

19 (b) It is the policy of the state to recognize and encourage the participation of the
20 public in privately and publicly funded mitigation, restoration, and enhancement
21 programs in order to protect and increase naturally spawning salmon and steelhead
22 trout resources.

23 (c) It is the policy of the state that existing natural salmon and steelhead trout
24 habitat shall not be diminished further without offsetting the impacts of the lost
25 habitat.

26 **Comment.** Section 25115 continues former Fish and Game Code Section 6902 without
27 change.

28 **§ 25120. Nonprofit salmon release and return operations**

29 25120. (a) It is the policy of the state and the department to encourage nonprofit
30 salmon release and return operations subject to this code operated by, or on behalf
31 of, licensed commercial salmon fishermen for the purpose of enhancing
32 California's salmon populations and increasing the salmon harvest by commercial
33 and recreational fishermen.

34 (b) The department shall, to the extent that funds and personnel are available,
35 cooperate with fishing organizations in the siting and establishment of those
36 operations to ensure the protection of natural spawning stocks of native salmon.
37 The organizations conducting the operations may receive salmon eggs and
38 juvenile salmon for the purposes of the operation, and, where appropriate, shall
39 have priority to receive salmon eggs and juvenile salmon for those purposes after
40 the needs of habitat mitigation efforts, and state hatcheries are met.

41 **Comment.** Section 25120 continues former Fish and Game Code Section 6903 without

1 substantive change.

2 **§ 25125. Creation of program**

3 25125. (a) The department shall, with the advice of the Advisory Committee on
4 Salmon and Steelhead Trout and the Commercial Salmon Trollers Advisory
5 Committee, prepare and maintain a detailed and comprehensive program for the
6 protection and increase of salmon, steelhead trout, and anadromous fisheries.

7 (b) The program shall identify the measures the department will carry out to
8 achieve the policies set forth in **Section 6902**.

9 **Comment.** Subdivision (a) of Section 25125 continues former Fish and Game Code Section
10 6920(a) without change.

11 Subdivision (b) continues former Fish and Game Code Section 6921 without substantive
12 change.

13 **§ 25130. Consultation with other agencies**

14 25130. The department shall consult with every public agency whose policies or
15 decisions may affect the goals of this program to determine if there are feasible
16 means for those public agencies to help the department achieve the goals of this
17 program.

18 **Comment.** Section 25130 continues former Fish and Game Code Section 6920(b) without
19 change.

20 **§ 25135. Report of determined elements of program**

21 25135. The department shall determine the initial elements of the program and
22 transmit a report describing those elements to the Legislature and the Advisory
23 Committee on Salmon and Steelhead Trout within six months of the effective date
24 of this chapter.

25 **Comment.** Section 25135 continues former Fish and Game Code Section 6924 without
26 change.

27  **Staff Note.** Existing Fish and Game Code Section 6924 (which would be continued by
28 proposed Section 25135) requires the Department to take specified actions within six months of
29 the effective date of the chapter in which Section 6924 appears (Chapter 8 (commencing with
30 Section 6900) of Part 1 of Division 6 of the existing code).

31 The effective date of that chapter (added by 1988 Cal. Stat. ch. 1545) was January 1, 1989,
32 suggesting the strong likelihood that the Department has long ago complied with the one-time
33 requirements of Section 6924.

34 **The staff invites comment on whether existing Section 6924 can be discontinued from the**
35 **proposed law as obsolete.**

36 **§ 25140. Ineligibility**

37 25140. Measures that are the responsibility of other agencies or persons, such as
38 the repair or replacement of dysfunctional fish screens, are not eligible for funding
39 under the program.

40 **Comment.** Section 25140 continues former Fish and Game Code Section 6923 without
41 substantive change.

1 **§ 25145. Program elements**

2 25145. The program shall include, but is not limited to, all of the following
3 elements:

4 (a) Identification of streams where the natural production of salmon and
5 steelhead trout can be increased primarily through the improvement of stream and
6 streambank conditions without effect on land ownership, land use practices, or
7 changes in streamflow operations.

8 (b) Identification of streams where the natural production of salmon and
9 steelhead trout can be increased only through the improvement of land use
10 practices or changes in streamflow operations.

11 (c) Identification of streams where the protection of, and increase in, salmon and
12 steelhead trout resources require, as a result of significant prior loss of stream
13 habitat, the construction of artificial propagation facilities.

14 (d) A program element for evaluating the effectiveness of the program.

15 (e) Recommendations for an organizational structure, staffing, budgeting, long-
16 term sources of funding, changes in state statutes and regulations and federal and
17 local government policy and such other administrative and legislative actions as
18 the department finds to be necessary to accomplish the purposes of this chapter.

19 (f) Identification of measures to protect and increase the production of other
20 anadromous fisheries consistent with policies set forth in **Section 6902**.

21 (g) Identification of alternatives to, or mitigation of, manmade factors that cause
22 the loss of juvenile and adult fish in California's stream system.

23 **Comment.** Section 25145 continues former Fish and Game Code Section 6922 without
24 substantive change.

25 **§ 25150. Study of effect of reduced flow**

26 25150. (a) Subject to the availability of funds for the purposes of this section,
27 the department shall contract with the University of California to conduct a study
28 of the effects that reduced waterflows at the mouths and upstream estuaries of
29 rivers selected under subdivision (b) would have on existing salmon and steelhead
30 populations, and on existing or prospective salmon and steelhead population
31 restoration or reintroduction programs.

32 (b) The department shall select the rivers to be included in the study, and shall
33 limit its selection to rivers that satisfy both of the following conditions:

34 (1) The river is within the combined river systems described in paragraph (7) of
35 subdivision (a) of Section 1215.5 of the Water Code.

36 (2) The river is the subject of an application filed with the State Water
37 Resources Control Board to appropriate water in an amount equal to more than
38 three cubic feet per second or more than 500 acre feet per annum of storage,
39 involving the delivery of water by means other than a pipeline, natural
40 watercourse, well, or aqueduct, to any place of use that is outside of the protected
41 area described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water
42 Code.

1 (c) The findings of the study conducted under this section shall be a factor in
2 any decision of the State Water Resources Control Board to approve or deny an
3 application to appropriate water from any river selected under this section. If the
4 application involves the delivery of water, by means other than a pipeline, natural
5 watercourse, well, or aqueduct, to any place of use outside of the protected area
6 described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code,
7 the board may not approve that application until after the study has been
8 completed.

9 (d) Any study conducted pursuant to this section shall conclude within five years
10 of the start of that study.

11 (e) This section applies to the University of California only if the Regents of the
12 University of California, by resolution, make it applicable to the university.

13 **Comment.** Section 25150 continues former Fish and Game Code Section 6930 without
14 substantive change.

15 CHAPTER 3. PRIVATE NONPROFIT HATCHERIES

16 § 25200. Issuance of permit

17 25200. (a) The commission may issue a permit, subject to restrictions and
18 regulations that the commission deems desirable, to a nonprofit organization, to
19 construct and operate an anadromous fish hatchery.

20 (b) No permit will be issued that may tend to deplete the natural runs of
21 anadromous fish, result in waste or deterioration of fish, or when the proposed
22 operation is located on a stream or river below a state or federal fish hatchery or
23 egg-taking station.

24 **Comment.** Subdivision (a) of Section 25200 continues former Fish and Game Code Section
25 1170 without substantive change.

26 Subdivision (b) continues former Fish and Game Code Section 1172 without substantive
27 change.

28 § 25205. Permit conditions

29 25205. Any permit granted by the commission pursuant to this chapter shall
30 contain all of the following conditions:

31 (a) If after a hearing the commission finds that the operation described in the
32 permit and conducted pursuant to this chapter is not in the best public interest, the
33 commission may alter the conditions of the permit to mitigate the adverse effects,
34 or may cause an orderly termination of the operation under the permit. An orderly
35 termination shall not exceed a three-year period and shall culminate in the
36 revocation of the permit in its entirety.

37 (b) If the commission finds that the operation has caused deterioration of the
38 natural run of anadromous fish in the waters covered by the permit, it may require
39 the permittee to return the fishery to the same condition as was prior to issuance of
40 the permit. If the permittee fails to take appropriate action, the commission may

1 direct the department to take the action, and the permittee shall bear any cost
2 incurred by the department.

3 (c) Prior to release into state waters and at any other time deemed necessary by
4 the department, the fish may be examined by the department to determine that they
5 are not diseased or infected with any disease which, in the opinion of the
6 department, may be detrimental to the state fishery resources.

7 **Comment.** Section 25205 continues former Fish and Game Code Section 1174 without
8 substantive change.

9 TITLE 2. COMMERCIAL PROVISIONS [RESERVED]

10 PART 3. ANCHOVIES

11 TITLE 1. ANCHOVIES GENERALLY

12 § 25250. Provisions not exclusive

13 25250. The provisions of this part are not intended to be exclusive. Other
14 provisions that may govern anchovies include, but are not limited to, the following
15 provisions:

16 (a) **Section 8046.**

17 (b) **Section 8597.**

18 (c) **Section 8780.**

19 (d) **Section 8870.**

20 **Comment.** Section 25250 is new.

21 TITLE 2. COMMERCIAL PROVISIONS

22 CHAPTER 1. PRELIMINARY PROVISIONS

23 § 25300. Application of title

24 25300. For purposes of **Section 7600**, the provisions in this title are commercial
25 provisions.

26 **Comment.** Section 25300 is new. It is added for drafting convenience.

27 CHAPTER 2. MANAGEMENT OF RESOURCE

28 § 25305. Policy declaration

29 25305. (a) It is the policy of the State of California that the anchovy resource
30 shall be managed in a manner that insures the continued abundance of the species.
31 To that end, the department shall conduct, or have others conduct, annual anchovy
32 egg-larvae surveys or any other annual surveys, research, and analyses necessary
33 to insure that an accurate biomass estimate is made.

1 (b) This section shall become operative, and activities shall be carried out
2 pursuant to this section, only in the event and to the extent that funding is made
3 available for those activities by the federal government.

4 **Comment.** Section 25305 continues former Fish and Game Code Section 8190 without
5 substantive change.

6 **§ 25310. Area south of Point Mugu**

7 25310. (a) In any district or part of a district lying south of a line drawn east and
8 west through Point Mugu, anchovies may be taken in any quantity for bait or for
9 human consumption in a fresh state, or, by contract with the department, for
10 hatchery food, not to exceed 500 tons per year.

11 (b) Anchovies taken south of the line described in subdivision (a), in waters not
12 less than three nautical miles from the nearest point of land on the mainland shore,
13 and anchovies taken north of that line in any waters, may be possessed,
14 transported, sold, or otherwise dealt with in any district or part of a district south
15 of that.

16 (c) The operator of any boat engaged in taking anchovies in waters south of the
17 line described in subdivision (a) shall at all times while operating the boat identify
18 it by displaying on an exposed part of the superstructure, amidships on each side
19 and on top of the house visible from the air, the Department of Fish and Wildlife
20 registration number of the boat, in 14-inch black numerals on white background.

21 **Comment.** Subdivision (a) of Section 25310 continues former Fish and Game Code Section
22 8180 without change.

23 Subdivision (b) continues former Fish and Game Code Section 8181 without substantive
24 change.

25 Subdivision (c) continues former Fish and Game Code Section 8182 without substantive
26 change.

27 **§ 25315. Humboldt Bay**

28 25315. (a) No anchovies may be taken for any purpose in Humboldt Bay, except
29 under the following conditions:

30 (1) Anchovies may be taken for live bait between May 1 and December 1 and
31 may be taken for dead bait between May 1 and August 31.

32 (2) The operator of a vessel may take anchovies only for use in his or her own
33 fishing operation, except that the operator may make incidental sales of anchovies
34 so taken to local sport fishermen for their use as bait. This paragraph does not
35 prevent the cooperative effort of two or more vessel operators or their crews
36 working together with one net if each operator has complied with the notification
37 requirement in paragraph (3).

38 (3) An observer who is an employee of the department shall inspect any bait
39 operation and may halt that operation if the operation cannot be conducted without
40 adversely affecting the game species of the bay. Notification of all bait operations
41 shall be dispatched so as to be received by the department at least 12 hours prior to
42 the commencement of the operation.

1 (4) Anchovies may be taken in **Districts 8 and 9** only north of a line extending
2 through channel markers 8 and 9 in Humboldt Bay.

3 (5) Not more than 15 tons of anchovies may be taken between May 1 and
4 August 31 of each year and not more than 15 tons may be taken between
5 September 1 and December 1 of each year.

6 (6) Only bait nets, as defined in **Section 8780**, shall be used to take anchovies.

7 (7) Any game fish caught incidentally in a bait net intended to catch anchovies
8 shall be released by use of a hand scoop net or by dipping the cork line.

9 (b) An accurate record of all fishing operations pursuant to this section shall be
10 kept and is subject to inspection by the department.

11 (c) The commission shall adopt any other regulation it determines is necessary
12 to protect the Humboldt Bay anchovy resource.

13 **Comment.** Section 25315 continues former Fish and Game Code Section 8183 without
14 substantive change.

15 **§ 25320. Revocation or suspension of license**

16 25320. (d) Notwithstanding **Sections 12000, 12001, and 12002**, the commercial
17 fishing license of the master of a vessel may be revoked or suspended by the
18 commission, when requested by the department, for a period not to exceed one
19 year, upon the second conviction in three years of the master or the master's agent,
20 servant, employee, or any other person acting under the master's direction or
21 control, for a violation of any provision of this chapter.

22 (b) A master's license shall not be revoked unless both the first and second
23 convictions are for a violation by the master or a violation occurring when the
24 person convicted was acting as the master's agent, servant, employee, or acting
25 under the master's direction or control.

26 (c) The master of a vessel is the person on board the vessel who is in charge of
27 the vessel.

28 **Comment.** Section 25320 continues the part of former Fish and Game Code Section
29 12022.8(d)-(f) applicable to the provisions of this chapter, without substantive change.

30 **CHAPTER 3. USE IN CANNERY**

31 **§ 25350. Unloading for use in cannery**

32 25350. (a) No anchovies intended for or used in any cannery shall be unloaded
33 from any vessel, except at a weighing or measuring device approved by the
34 Bureau of Weights and Measures.

35 (b) Those anchovies shall be weighed by a public weighmaster licensed as an
36 individual under the laws of this state, and a receipt as to that weight shall be
37 immediately issued by the weighmaster to the commercial fisherman at the time of
38 receipt of the products.

39 (c) Copies of the receipt shall be handled in the manner provided in **Chapter 3**
40 **(commencing with Section 14300)** and **Chapter 4 (commencing with Section**

1 **14500) of Title 9.**

2 **Comment.** Section 25350 continues the part of former Fish and Game Code Section 7702.1
3 applicable to anchovies without substantive change.

4 **PART 4. BARRACUDA**

5 **TITLE 1. BARRACUDA GENERALLY**

6 **§ 25400. Provisions not exclusive**

7 25400. The provisions of this part are not intended to be exclusive. Other
8 provisions that may govern barracuda include, but are not limited to, the following
9 provisions:

10 (a) **Section 8385.**

11 (c) **Section 10664.**

12 (d) **Section 10667.**

13 **Comment.** Section 25400 is new.

14 **§ 25405. Delivery of barracuda taken from waters off coast of Mexico**

15 25405. (a) Barracuda taken in waters lying south of the maritime boundary line
16 between the United States and Mexico, with that maritime boundary line
17 including, but not limited to, the federal Exclusive Economic Zone boundary, may
18 be delivered to California ports aboard boats, including boats carrying purse seine
19 or round haul nets, in accordance with those regulations as the commission may
20 make governing the inspection and marking of those fish imported into this state.
21 The cost of that inspection and marking shall be paid by the importer.

22 (b) Barracuda taken in Mexico shall not be imported, unless legally taken and
23 legally possessed, and a declaration is submitted to the department pursuant to
24 **Section 2353.**

25 **Comment.** Section 25405 continues the part of former Fish and Game Code Section 2362
26 applicable to barracuda without substantive change.

27 **TITLE 2. COMMERCIAL PROVISIONS**

28 **§ 25450. Application of title**

29 25450. For purposes of **Section 7600**, the provisions in this title are commercial
30 provisions.

31 **Comment.** Section 25450 is new. It is added for drafting convenience.

32 **§ 25455. Size restrictions**

33 25455. (a) Barracuda shall be measured from the tip of the lower jaw to the end
34 of the longer lobe of the tail.

35 (b) Barracuda measuring equal to or greater than 28 inches in length may be
36 taken with hook and line at any time.

1 (c) Barracuda measuring less than 28 inches in length may not be sold or
2 purchased, except that not more than five barracuda per day of any length may be
3 possessed by a commercial fisherman for noncommercial use, if taken incidentally
4 while engaged in commercial fishing.

5 **Comment.** Subdivision (a) of Section 25455 continues the part of former Fish and Game Code
6 Section 8386 applicable to barracuda without substantive change.

7 Subdivision (b) continues the part of former Fish and Game Code Section 8382 applicable to
8 barracuda without substantive change.

9 Subdivision (c) continues the part of former Fish and Game Code Section 8384 applicable to
10 barracuda without substantive change.

11 **§ 25460. Use of purse seines or round haul nets**

12 25460. (a) It is unlawful to use any purse seine or round haul net to take a
13 barracuda.

14 (b) It is unlawful to possess a barracuda, except those taken south of the
15 international boundary between the United States and Mexico, and imported into
16 the state under regulations of the commission as provided in Section 25355, on
17 any boat carrying or using any purse seine or round haul net, including, but not
18 limited to, a bait net as described in **Section 8780**.

19 (c) Notwithstanding subdivision (b), the department may issue permits to hook
20 and line commercial fishermen to possess a bona fide bait net on their vessels for
21 the purpose of taking bait for their own use only.

22 **Comment.** Section 25460 continues the parts of former Fish and Game Code Section 8623(a),
23 (b), and (e) applicable to barracuda without substantive change.

24 **Staff Note.** The part of existing Fish and Game Code Section 8623(a), (b), and (e) that
25 appears applicable to barracuda would be continued by proposed Section 25460. (Subdivisions
26 (c) and (d) of Section 8623, which relate to the use of gill nets, would be continued by proposed
27 provisions located among other gill net provisions.)

28 However, because Section 8623 addresses multiple subjects, the intended meaning of existing
29 subdivision (e) of that section (which would be continued by proposed Section xxx(c)) is
30 potentially ambiguous.

31 Existing Section 8623 in its entirety reads as follows:

32 “8623. (a) It is unlawful to use any purse seine or round haul net to take yellowtail, barracuda,
33 or white sea bass.

34 (b) It is unlawful to possess any yellowtail, barracuda, or white sea bass, except those taken
35 south of the international boundary between the United States and Mexico, and imported into the
36 state under regulations of the commission as provided in Section 2362, on any boat carrying or
37 using any purse seine or round haul net, including, but not limited to, a bait net as described in
38 Section 8780.

39 (c) Gill nets with meshes of a minimum length of 3 1/2 inches may be used to take yellowtail
40 and barracuda.

41 (d) Gill nets with meshes of a minimum length of six inches may be used to take white sea
42 bass; however, during the period from June 16 to March 14, inclusive, not more than 20 percent
43 by number of a load of fish may be white seabass 28 inches or more in total length, up to a
44 maximum of 10 white seabass per load, if taken in gill nets or trammel nets with meshes from 3
45 1/2 to 6 inches in length.

46 (e) Notwithstanding the provisions of this section, the department may issue permits to hook
47 and line commercial fishermen to possess a bona fide bait net on their vessels for the purpose of

1 taking bait for their own use only.

2 As the only subdivision in existing Section 8623 that contains a reference to a bait net, or
3 appears to have any relevance to bait nets, is existing Section 8623(b) (which would be continued
4 by proposed Section 25410(b)), proposed Section 25460(c) would revise the clause in existing
5 Section 8623(e) that reads “Notwithstanding the provisions of this section” to read
6 “Notwithstanding subdivision (b).”

7 **The staff invites comment on whether this revision preserves the intended meaning of**
8 **existing Section 8623(e).**

9 PART 5. BASS

10 TITLE 1. BASS GENERALLY

11 CHAPTER 1. PRELIMINARY PROVISIONS

12 § 25500. Provisions not exclusive

13 25500. The provisions of this part are not intended to be exclusive. Other
14 provisions that may govern bass include, but are not limited to, the following
15 provisions:

16 (a) **Section 7361.**

17 (b) **Section 7856.**

18 (c) **Section 8385.**

19 (d) **Section 8436.**

20 (e) **Section 8436.5.**

21 (f) **Section 10664.**

22 (g) **Section 10667.**

23 **Comment.** Section 25500 is new.

24 CHAPTER 2. SPECIFIC TYPES OF BASS

25 § 25550. Black bass

26 25550. Black bass lawfully taken may be carried or transported into and
27 possessed in an area where the season is closed.

28 **Comment.** Section 25550 continues the part of former Fish and Game Code Section 2360
29 applicable to black bass without change.

30 § 25555. Giant seabass

31 25555. Giant seabass (*Stereolepis gigas*) may not be taken under a sport fishing
32 license except by hook and line when engaged in the taking of other fish. This
33 section, and any regulation adopted by the commission relating to this section,
34 shall supersede **Section 2353.**

35 **Comment.** Section 25555 continues former Fish and Game Code Section 7350 without
36 substantive change.

1 § 25560. Spotted bass

2 25560. Spotted bass lawfully taken may be carried or transported into and
3 possessed in an area where the season is closed.

4 **Comment.** Section 25560 continues the part of former Fish and Game Code Section 2360
5 applicable to spotted bass without change.

6 § 25565. Striped bass

7 25565. (a) Except as provided in subdivision (b), striped bass may be
8 transported or carried out of or into this state only as follows:

9 (1) A resident of California, or the holder of a valid nonresident California sport
10 fishing license, lawfully taking striped bass from the Colorado River or from the
11 Arizona shore of that river, may transport or carry the fish taken into California.

12 (2) A resident of Arizona, or the holder of a valid nonresident Arizona sport
13 fishing license, lawfully taking striped bass from the Colorado River or from the
14 California shore of that river, may transport or carry the fish taken into Arizona.

15 (b) Striped bass legally taken in another state that permits the sale of that fish
16 may be imported into this state under regulations of the commission. Before the
17 commission adopts any regulation pursuant to this section, a public hearing shall
18 be held in the San Francisco or Sacramento area.

19 **Comment.** Subdivision (a) of Section 25565 restates former Fish and Game Code Section
20 2359 without substantive change.

21 Subdivision (b) continues the part of former Fish and Game Code Section 2363 applicable to
22 striped bass without substantive change.

23 **Staff Note.** Proposed Section 25565(a) is intended to restate existing Fish and Game Code
24 Section 2359 to improve the clarity of that provision, without changing its substantive effect. The
25 existing provision reads as follows:

26 “Except as provided in Section 2363, no striped bass may be transported or carried out of or
27 into this state, except striped bass taken from the Colorado River by sportfishing licensees to the
28 extent and in the manner following:

29 (a) A resident of California, or the holder of a valid nonresident California sportfishing license,
30 lawfully taking such fish on the waters or from the Arizona shore of the river may transport or
31 carry such fish into California.

32 (b) A resident of Arizona, or the holder of a valid nonresident Arizona sportfishing license,
33 lawfully taking such fish on the waters or from the California shore of the river may transport or
34 carry such fish into Arizona.”

35 **The staff invites comment on whether the restatement would cause any substantive
36 change in the meaning of existing Section 2359.**

37 § 25570. White bass

38 25570. In addition to **Section 6400**, it is unlawful to transport or possess any live
39 white bass (*Marone chrysops*), whether taken within or without the state, unless it
40 is first submitted for inspection to, and written permission is obtained from, the
41 department.

42 **Comment.** Section 25570 continues former Fish and Game Code Section 6400.5 without
43 substantive change.

1 **§ 25575. White sea bass**

2 25575. (a) White sea bass taken in waters lying south of the maritime boundary
3 line between the United States and Mexico, with that maritime boundary line
4 including, but not limited to, the federal Exclusive Economic Zone boundary, may
5 be delivered to California ports aboard boats, including boats carrying purse seine
6 or round haul nets, in accordance with those regulations as the commission may
7 make governing the inspection and marking of those fish imported into this state.
8 The cost of that inspection and marking shall be paid by the importer.

9 (b) White sea bass taken in Mexico shall not be imported unless legally taken
10 and legally possessed, and a declaration is submitted to the department pursuant to
11 **Section 2353.**

12 (c) Any person who takes, possesses aboard a boat, or lands any white sea bass
13 for a commercial purpose, in ocean waters south of a line extending due west from
14 Point Arguello, shall have a valid commercial fishing ocean enhancement
15 validation issued to that person that has not been suspended or revoked.

16 **Comment.** Subdivisions (a) and (b) of Section 25575 continue the part of former Fish and
17 Game Code Section 2362 applicable to white sea bass without substantive change.

18 Subdivision (c) continues former Fish and Game Code Section 6596.1(c) without substantive
19 change.

20 **CHAPTER 3. BLACK BASS CONSERVATION AND MANAGEMENT ACT OF 1980**

21 **§ 25600. Name of act**

22 25600. This chapter shall be known as the Black Bass Conservation and
23 Management Act of 1980.

24 **Comment.** Section 25600 continues former Fish and Game Code Section 1740 without
25 substantive change.

26 **§ 25605. Declaration of preservation**

27 25605. The Legislature hereby finds and declares that it is the policy of the state
28 to preserve and enhance black bass resources and to manage black bass
29 populations to provide satisfactory recreational opportunities to the public.

30 **Comment.** Section 25605 continues former Fish and Game Code Section 1741 without
31 change.

32 **§ 25610. Declaration relating to funding**

33 25610. The Legislature further finds and declares that the black bass
34 management program components specified in this chapter are a continuation of
35 the department's existing warmwater fisheries program, and, as such, shall be
36 funded from existing department budgetary resources.

37 **Comment.** Section 25610 continues former Fish and Game Code Section 1742 without
38 change.

1 § 25615. Components of management program

2 25615. (a) The department’s black bass management program shall include, but
3 not be limited to, the following components:

4 (1) The department shall determine the angler harvest of black bass populations
5 and shall recommend to the commission the changes in angling regulations for
6 black bass that would be necessary to prevent or correct overharvest.

7 (2) The department shall consider recommending to the commission catch and
8 release regulations for black bass, including minimum or maximum size
9 restrictions and management for trophy-sized black bass in some waters.

10 (3) The department shall consider the suitability of the many different species,
11 subspecies, and strains of black bass when management programs are formulated.

12 (4) The department shall improve shoreline habitat for black bass in waters
13 where insufficient habitat exists and shall encourage reservoir operating agencies
14 to carry out shoreline habitat improvement projects.

15 (b) For the purposes of this section, “black bass” means fishes of the
16 Centrarchidae family.

17 **Comment.** Section 25615 continues former Fish and Game Code Section 1743 without
18 change.

19 TITLE 2. COMMERCIAL PROVISIONS

20 CHAPTER 1. PRELIMINARY PROVISIONS

21 § 25650. Application of title

22 25650. For purposes of **Section 7600**, the provisions in this title are commercial
23 provisions.

24 **Comment.** Section 25650 is new. It is added for drafting convenience.

25 CHAPTER 2. STRIPED BASS

26 § 25700. Anadromous fish

27 25700. For the purposes of Part 2 (commencing with Section 25050), a striped
28 bass is an anadromous fish.

29 **Comment.** Section 25700 is new.

30  **Staff Note.** Based on staff research, it appears that a striped bass is an anadromous fish. **The**
31 **staff invites comment on whether that is correct.**

32 § 25705. Provisions not exclusive

33 25705. This chapter includes some but not all provisions of this code that govern
34 striped bass. Other provisions that may govern striped bass include, but are not
35 limited to, the following provisions:

36 (a) **Section 8685.5**

1 (b) **Section 8685.6.**

2 (c) **Section 8685.7.**

3 (d) **Section 15301.**

4 **Comment.** Section 25705 is new.

5 **§ 25710. Take with purse or round haul net**

6 25710. Striped bass may not be taken with a purse or round haul net.

7 **Comment.** Section 25710 continues the part of former Fish and Game Code Section 8756
8 applicable to striped bass without substantive change.

9 **§ 25715. Required return to water**

10 25715. (a) Any striped bass that is taken in any type of net shall, regardless of its
11 condition, be immediately freed and removed from the net by the fisherman, and
12 immediately returned to the water without further harm.

13 (b) A commercial fisherman shall not have any striped bass, whether dead or
14 alive, in his or her possession, at any time when conducting netting operations or
15 when going to or from those operations, except when releasing a striped bass from
16 a net.

17 (c) The return of striped bass to the water pursuant to this section is not
18 deterioration, waste, or spoilage of fish for purposes of **Section 7704.**

19 **Comment.** Section 25715 continues the part of former Fish and Game Code Section 8370
20 applicable to striped bass without substantive change.

21 **§ 25720. Possession, offer for sale, sale, or purchase**

22 25720. Striped bass may be possessed, offered for sale, sold, or purchased, only
23 under the following conditions:

24 (a) If the striped bass is taken or possessed by, and is the cultured progeny of, an
25 aquaculturist registered under **Section 15101**, the striped bass may be possessed,
26 offered for sale, sold, or purchased subject to regulations of the commission.

27 (b) If the striped bass is taken legally in another state that permits its sale, and
28 lawfully imported under **Section 2363**, the striped bass may be possessed, offered
29 for sale, sold, or purchased.

30 **Comment.** Section 25720 continues former Fish and Game Code Section 8371(a) and (b)
31 without substantive change.

32 **§ 25725. Use of net in waters upstream from Carquinez Bridge**

33 25725. (a) It is unlawful for any person to use, operate, or assist in using or
34 operating any net to take striped bass for a commercial purpose in any tidal waters
35 lying upstream from the Carquinez Bridge, or to possess a net on a boat in those
36 waters that is unlawful to use in those waters.

37 (b) The punishment for a first violation of this section is a fine of not more than
38 two thousand dollars (\$2,000), imprisonment in a county jail for not more than one
39 year, or both that fine and imprisonment.

1 (c) A second or subsequent violation of this section is punishable by a fine of
2 not less than two thousand dollars (\$2,000) nor more than four thousand dollars
3 (\$4,000), or imprisonment in the county jail for one year, or both that fine and
4 imprisonment.

5 **Comment.** Subdivision (a) of Section 25725 continues the part of former Fish and Game Code
6 Section 8670 applicable to striped bass without substantive change.

7 Subdivision (b) continues former Fish and Game Code Section 12002(b)(5) without
8 substantive change.

9 Subdivision (c) continues former Fish and Game Code Section 12003 without substantive
10 change.

11 CHAPTER 3. WHITE SEA BASS

12 § 25750. Provisions not exclusive

13 25750. This chapter includes some but not all provisions of this code that govern
14 white sea bass. Other provisions that may govern white sea bass include, but are
15 not limited to, the following provisions:

16 (a) **Section 6590.**

17 (b) **Section 7051.**

18 (c) **Section 7059.**

19 (d) **Section 7071.**

20 (e) **Section 8576.**

21 (f) **Section 9027.5.**

22 (g) **Section 10664.**

23 (h) **Section 10667.**

24 (i) **Section 15400.**

25 **Comment.** Section 25750 is new.

26 § 25755. Undersized white sea bass

27 25755. It is unlawful to take, possess, sell, or purchase any white sea bass less
28 than 28 inches in length, measured from the tip of the lower jaw to the end of the
29 longer lobe of the tail.

30 **Comment.** Section 25755 continues former Fish and Game Code Section 8383.5 without
31 change.

32 § 25760. Use of purse seines or round haul nets

33 25760. (a) It is unlawful to use any purse seine or round haul net to take a white
34 sea bass.

35 (b) It is unlawful to possess a white sea bass, except those taken south of the
36 international boundary between the United States and Mexico, and imported into
37 the state under regulations of the commission as provided in Section 25520, on
38 any boat carrying or using any purse seine or round haul net, including, but not
39 limited to, a bait net as described in **Section 8780.**

40 (c) Notwithstanding the provisions of this section, the department may issue

1 permits to hook and line commercial fishermen to possess a bona fide bait net on
2 their vessels for the purpose of taking bait for their own use only.

3 **Comment.** Section 25760 continues the parts of former Fish and Game Code Section 8623(a),
4 (b), and (e) applicable to white sea bass without substantive change.

5 **Staff Note.** The part of existing Fish and Game Code Section 8623(a), (b), and (e) that
6 appears applicable to white sea bass would be continued by proposed Section 25760.
7 (Subdivisions (c) and (d) of Section 8623, which relate to the use of gill nets, would be continued
8 by proposed provisions located among other gill net provisions.)

9 However, because Section 8623 addresses multiple subjects, the intended meaning of existing
10 subdivision (e) of that section (which would be continued by proposed Section 25710(c)) is
11 potentially ambiguous.

12 Existing Section 8623 in its entirety reads as follows:

13 “8623. (a) It is unlawful to use any purse seine or round haul net to take yellowtail, barracuda,
14 or white sea bass.

15 (b) It is unlawful to possess any yellowtail, barracuda, or white sea bass, except those taken
16 south of the international boundary between the United States and Mexico, and imported into the
17 state under regulations of the commission as provided in Section 2362, on any boat carrying or
18 using any purse seine or round haul net, including, but not limited to, a bait net as described in
19 Section 8780.

20 (c) Gill nets with meshes of a minimum length of 3 1/2 inches may be used to take yellowtail
21 and barracuda.

22 (d) Gill nets with meshes of a minimum length of six inches may be used to take white sea
23 bass; however, during the period from June 16 to March 14, inclusive, not more than 20 percent
24 by number of a load of fish may be white seabass 28 inches or more in total length, up to a
25 maximum of 10 white seabass per load, if taken in gill nets or trammel nets with meshes from 3
26 1/2 to 6 inches in length.

27 (e) Notwithstanding the provisions of this section, the department may issue permits to hook
28 and line commercial fishermen to possess a bona fide bait net on their vessels for the purpose of
29 taking bait for their own use only.

30 As the only subdivision in existing Section 8623 that contains a reference to a bait net, or
31 appears to have any relevance to bait nets, is existing Section 8623(b) (which would be continued
32 by proposed Section 25760(b)), proposed Section 25760(c) would revise the clause in existing
33 Section 8623(e) that reads “Notwithstanding the provisions of this section” to read
34 “Notwithstanding subdivision (b).”

35 **The staff invites comment on whether this revision preserves the intended meaning of**
36 **existing Section 8623(e).**

37 CHAPTER 4. OTHER BASS

38 § 25800. Giant seabass

39 25800. (a) Giant seabass (*Stereolepis gigas*) may not be taken for any purpose,
40 except that not more than one fish per vessel may be possessed or sold if taken
41 incidentally in commercial fishing operations by gill or trammel net. Any fish so
42 taken shall not be transferred to any other vessel.

43 (b) The restrictions specified in this section shall not apply to 1,000 pounds of
44 giant seabass per trip taken in waters lying south of the International Boundary
45 Line between the United States and Mexico extended westerly into the Pacific
46 Ocean. Fish taken under this provision, however, shall be limited to a maximum

1 aggregate of 3,000 pounds per vessel in any calendar year. A current fishing
2 permit issued by the Mexican government constitutes valid evidence that the giant
3 seabass were taken south of the international boundary.

4 **Comment.** Section 25800 continues former Fish and Game Code Section 8380 without
5 change.

6 **§ 25805. Kelp bass, sand bass, or spotted bass**

7 25805. (a) Kelp bass, sand bass, and spotted bass, all of the genus *Paralabrax*,
8 shall not be sold or purchased, or possessed in any place where fish are purchased,
9 possessed for sale, or sold, or where food is offered or processed for sale, or in any
10 truck, vessel, or other conveyance operated by or for a place so selling or
11 possessing fish, except that those fish may be imported into this state pursuant to
12 **Article 1 (commencing with Section 2345) of Chapter 4 of Division 3**, and may
13 be sold under regulations as the commission may adopt.

14 (b) It is unlawful to take, possess, or sell any fish specified in this section that is
15 less than 10 1/2 inches in length.

16 **Comment.** Section 25805 continues former Fish and Game Code Section 8372 without
17 substantive change.

18 **PART 6. CARP**

19 **TITLE 1. CARP GENERALLY**

20 **CHAPTER 1. PRELIMINARY PROVISIONS**

21 **§ 25850. Application of title**

22 25850. The provisions of this title do not apply to activities governed by
23 **Division 12 (commencing with Section 15000)**.

24 **Comment.** Section 25850 continues former Fish and Game Code Section 6403 without
25 substantive change.

26 **§ 25855. Provisions not exclusive**

27 25855. The provisions of this part are not intended to be exclusive. Other
28 provisions that govern carp include, but are not limited to, the following
29 provisions:

30 (a) **Section 8437.**

31 (b) **Section 8463.**

32 (c) **Section 8666.**

33 (d) **Section 8467.**

34 (e) **Section 8669.**

35 **Comment.** Section 25855 is new.

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CHAPTER 2. GRASS CARP

§ 25900. Preexisting grass carp programs

25900. Nothing in this chapter shall be construed as restricting grass carp programs approved by the department on or before June 1, 1995.

Comment. Section 25900 continues former Fish and Game Code Section 6456 without substantive change.

§ 25905. Legislative declaration

25905. The Legislature finds and declares that triploid grass carp have the potential to control aquatic nuisance plants in non-public waters allowing for reduced chemical control but that the threat that grass carp pose to aquatic habitat may outweigh its benefits. It is the intent of this section to allow the department to use its management authority to provide for the long-term health of the ecosystem in the state including the aquatic ecosystem, and in that context, manage grass carp either through control of movement, eradication of populations, acquisition of habitat and any other action that the department finds will maintain the biological diversity and the long term, overall health of the state’s environment. The department shall undertake the management of grass carp in a manner that is consistent with provisions of this code and for the purposes of this section the department shall define management as handling, controlling, destroying, or moving species. The Legislature does not intend for this section to provide a right for the use of triploid grass carp if the department finds that use of the species poses an unacceptable risk to the state’s existing ecosystem.

Comment. Section 25905 continues former Fish and Game Code Section 6440 without change.

§ 25910. Department regulations

25910. The department shall adopt regulations that provide for the control of aquatic plant pests using artificially introduced triploid grass carp under a permit issued by the department. The regulations shall do all of the following:

(a) Restrict triploid grass carp introductions to those triploid grass carp that have been rendered sterile immediately after the eggs have been fertilized.

(b) Require individual fish to be checked to ensure that a third, triploid, set of chromosomes has been retained, preventing further reproduction by that individual fish.

(c) Limit aquatic plant pest control programs using triploid grass carp to the use of sterile triploid grass carp with documented certification of triploidy to ensure sterility.

(d) Require the identification by tagging of individual fish as the property of each owner.

(e) Require the posting of notices at stocked bodies of water declaring the penalties for removing triploid grass carp.

1 (f) Limit the permits for the use of triploid grass carp in waters on golf courses
2 located in residential areas to those waters that are determined by the department
3 to be secure from the removal of triploid grass carp to unauthorized waters.

4 (g) Provide for management of the triploid grass carp populations in a manner
5 consistent with the provisions of this code where the department finds that such
6 actions will benefit the long-term health of the state's biodiversity as a whole.

7 (h) Until January 1, 1999, the regulations shall not authorize the issuance of
8 permits for the use of triploid grass carp in waters located within condominium
9 areas of any residential area for which a permit may not be issued pursuant to
10 subdivision (f), except at three locations within the area authorized pursuant to this
11 subdivision. The three locations shall be selected by the department in consultation
12 with the Imperial Irrigation District. The limitation to three locations is necessary
13 to enable monitoring of human-induced movement of triploid grass carp to
14 unauthorized waters, and to permit the evaluation of the impact of the experiment.

15 **Comment.** Section 25910 continues former Fish and Game Code Section 6450 without
16 substantive change.

17 **§ 25915. Certification by providers**

18 25915. All providers of triploid grass carp for use under this chapter shall
19 provide certification acceptable to the department of triploidy and disease-free
20 conditions for all fish introduced.

21 **Comment.** Section 25915 continues former Fish and Game Code Section 6451 without
22 substantive change.

23 **§ 25920. Information required for permit**

24 25920. Prior to receiving a permit from the department to use triploid grass carp,
25 the potential user shall provide to the department all information required by the
26 department, including, but not limited to, information relating to the following
27 matters:

28 (a) The type of waterway to be stocked.

29 (b) The absence of a connection between the site and adjacent fresh water
30 systems.

31 (c) All aquatic plant management problems, including, but not limited to,
32 problems relating to the following matters:

33 (1) The acres of aquatic plants, by species, at the peak of growing season.

34 (2) The desired vegetation quantity or coverage.

35 (3) The number and size of triploid grass carp recommended.

36 (4) All sensitive plant or animal species within the waterway to be stocked.

37 (5) Connected waterways.

38 **Comment.** Section 25920 continues former Fish and Game Code Section 6452 without
39 substantive change.

1 **§ 25925. Permit conditions**

2 25925. The department shall impose conditions in the permit to use triploid
3 grass carp under this chapter that it finds necessary to prevent escape of the
4 triploid grass carp from the targeted area. The conditions shall include, but are not
5 limited to, the following:

6 (a) No permit shall be issued for the use of triploid grass carp in waters with an
7 open fresh water connection to other waters of the state.

8 (b) Any waters in which triploid grass carp are used under this chapter shall be
9 under the control of the permittee. In addition, barriers to fish movement
10 acceptable to the department shall be in place before introduction of triploid grass
11 carp under this chapter. Movement of triploid grass carp to areas outside the
12 control of the permittee is prohibited.

13 (c) Any waters in which triploid grass carp are used under this chapter shall have
14 sufficient dissolved oxygen and suitable vegetation for consumption to sustain the
15 introduced triploid grass carp, as determined by the department.

16 (d) Except within closed basins, including the Salton Sea, no permit shall be
17 issued for the use of triploid grass carp within the 100-year flood plain.

18 (e) Any person or persons engaging in the introduction of triploid grass carp into
19 any area, or in the transfer of triploid grass carp from one site to another, without a
20 permit from the department, shall be punished by a fine of not more than five
21 thousand dollars (\$5,000), by imprisonment in the county jail for not more than
22 one year, or by both that fine and imprisonment.

23 **Comment.** Section 25925 continues former Fish and Game Code Section 6455 without
24 substantive change.

25 **§ 25930. Permit and inspection fees**

26 25930. The department shall establish permit and inspection fees sufficient to
27 recover, but not exceed, the initial and ongoing costs of the program under this
28 chapter.

29 **Comment.** Section 25930 continues former Fish and Game Code Section 6454 without
30 substantive change.

31 **§ 25935. Consultation with Department of Food and Agriculture**

32 25935. Because of its experience and continuing involvement with hydrilla
33 control programs, the implementation of Sections 25910 and 25930 shall be
34 carried out in consultation with the Department of Food and Agriculture.

35 **Comment.** Section 25935 continues former Fish and Game Code Section 6457 without
36 substantive change.

37 **§ 25940. Suspension of permit issuance process**

38 25940. (a) The department may suspend the permit issuance process authorized
39 by this chapter, if it obtains documented and verifiable evidence of escapements of
40 triploid grass carp permitted under this chapter into unauthorized waters, the

1 unauthorized use of grass carp, or threats to fish and wildlife and their habitats as
2 the result of this program, and the director makes a written finding to that effect.

3 (b) If the situation is local, the suspension may be limited to the area whose
4 waters, habitat, and fish and wildlife resources are threatened.

5 (c) The suspension shall last until the director makes a written finding that the
6 threat has been abated.

7 **Comment.** Section 25940 continues former Fish and Game Code Section 6460 without
8 substantive change.

9 TITLE 2. COMMERCIAL PROVISIONS

10 § 26000. Application of title

11 26000. For purposes of **Section 7600**, the provisions in this title are commercial
12 provisions.

13 **Comment.** Section 26000 is new. It is added for drafting convenience.

14 § 26005. Use of traps

15 26005. Traps may be used throughout the year to take carp in any district,
16 subject to the following restrictions:

17 (a) Traps shall not exceed six feet in greatest dimension.

18 (b) Traps shall be made of cotton or nylon twine.

19 (c) Meshes shall not be less than three and one-half inches in length, except that
20 fyke and bait bags may be any size mesh.

21 (d) Traps shall have only a single vertical fyke opening at the top of the trap.

22 (e) Traps shall be baited only with grain or grain products.

23 (f) Fish other than carp taken in traps pursuant to this section shall be
24 immediately returned to the water.

25 **Comment.** Section 26005 continues former Fish and Game Code Section 9023 without
26 substantive change.

27 PART 7. CATFISH

28 TITLE 1. CATFISH GENERALLY [*RESERVED*]

29 TITLE 2. COMMERCIAL PROVISIONS

30 § 26100. Application of title

31 26100. For purposes of **Section 7600**, the provisions in this title are commercial
32 provisions.

33 **Comment.** Section 26100 is new. It is added for drafting convenience.

1 § **26105. Provisions not exclusive**

2 26105. The provisions of this part are not intended to be exclusive. Other
3 provisions that govern catfish include, but are not limited to, **Section 15005**.

4 **Comment.** Section 26105 is new.

5 § **26110. Prohibited sale**

6 26110. No catfish may be sold, except catfish imported from outside the state or
7 catfish grown pursuant to **Division 12 (commencing with Section 15000)**.

8 **Comment.** Section 26110 continues former Fish and Game Code Section 8435 without
9 substantive change.

10 PART 8. CROAKER

11 TITLE 1. CROAKER GENERALLY [*RESERVED*]

12 TITLE 2. COMMERCIAL PROVISIONS

13 § **26200. Application of title**

14 26200. For purposes of **Section 7600**, the provisions in this title are commercial
15 provisions.

16 **Comment.** Section 26200 is new. It is added for drafting convenience.

17 § **26205. Provisions not exclusive**

18 26205. The provisions of this part are not intended to be exclusive. Other
19 provisions that govern croaker include, but are not limited to, the following
20 provisions:

21 (a) **Section 7856.**

22 (b) **Section 8385.**

23 (c) **Section 8597.**

24 (c) **Section 8609.**

25 (c) **Section 8780.**

26 (d) **Section 10664.**

27 (d) **Section 10666.**

28 (e) **Section 10667.**

29 **Comment.** Section 26205 is new.

30 § **26210. Yellowfin croaker, spotfin croaker, or California corbina**

31 26210. Yellowfin croaker, spotfin croaker, and California corbina shall not be
32 sold or purchased, or possessed in any place where fish are purchased, possessed
33 for sale, or sold, or where food is offered for sale, or in any truck or other
34 conveyance operated by or for a place selling or possessing fish.

35 **Comment.** Section 26210 continues former Fish and Game Code Section 8373 without
36 substantive change.

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PART 9. GROUND FISH

TITLE 1. GROUND FISH GENERALLY [*RESERVED*]

TITLE 2. COMMERCIAL PROVISIONS

§ 26300. Application of title

26300. For purposes of **Section 7600**, the provisions in this title are commercial provisions.

Comment. Section 26300 is new. It is added for drafting convenience.

§ 26305. Provisions not exclusive

26305. The provisions of this part are not intended to be exclusive. Other provisions that govern groundfish include, but are not limited to, the following provisions:

- (a) **Section 7630.**
- (b) **Section 7654.**
- (c) **Section 7655**
- (d) **Section 8125.**
- (e) **Section 8126.**

Comment. Section 26305 is new.

§ 26310. Marine species of finfish

26310. To the extent not in conflict with **Section 8607**, marine species of finfish that are classified as groundfish may be taken under the regulations of the commission.

Comment. Section 26310 continues former Fish and Game Code Section 8403(a) without substantive change.

§ 26315. Retention of landing receipt

26315. In addition to the requirements of **Section 8046**, any person landing groundfish subject to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.) shall keep a copy of the landing receipt on board the fishing vessel throughout, and for 15 days following, each period for which cumulative landings by individual vessels are limited.

Comment. Section 26315 continues former Fish and Game Code Section 8046.1 without substantive change.

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PART 10. GRUNION

TITLE 1. GRUNION GENERALLY

§ 26350. Provisions not exclusive

26350. The provisions of this part are not intended to be exclusive. Other provisions that govern grunion include, but are not limited to **Section 8597**.

Comment. Section 26350 is new.

TITLE 2. COMMERCIAL PROVISIONS

§ 26400. Application of title

26400. For purposes of **Section 7600**, the provisions in this title are commercial provisions.

Comment. Section 26400 is new. It is added for drafting convenience.

§ 26405. Season

26405. It is unlawful to take grunion (*Leuresthes tenuis*) between March 31 and June 1.

Comment. Section 26405 continues former Fish and Game Code Section 8381 without substantive change.

PART 11. HALIBUT

TITLE 1. HALIBUT GENERALLY

§ 26450. Provisions not exclusive

26450. The provisions of this part are not intended to be exclusive. Other provisions that govern halibut include, but are not limited to the following provisions:

- (a) **Section 6903.5.**
- (b) **Section 7361.**
- (c) **Section 8385.**
- (d) **Section 8405.3.**
- (e) **Section 8609.**
- (f) **Section 8625.**
- (g) **Section 8626.**
- (h) **Section 8841.**
- (i) **Section 9027.**
- (j) **Section 9027.5.**
- (k) **Section 9029.5.**
- (l) **Section 10664.**

1 (m) **Section 10666.**

2 (n) **Section 10667.**

3 **Comment.** Section 26450 is new.

4 **§ 26455. Conformity with other law**

5 26455. The commission may prohibit the taking or possessing of Pacific halibut
6 (Hippoglossus) in the same manner as the taking or possessing of Pacific halibut is
7 prohibited by federal law or by rules or regulations adopted by the International
8 Pacific Halibut Commission, notwithstanding any other provision of this code.

9 **Comment.** Section 26455 continues former Fish and Game Code Section 316 without change.

10 TITLE 2. COMMERCIAL PROVISIONS

11 CHAPTER 1. PRELIMINARY PROVISIONS

12 **§ 26500. Application of title**

13 26500. For purposes of **Section 7600**, the provisions in this title are commercial
14 provisions.

15 **Comment.** Section 26500 is new. It is added for drafting convenience.

16 CHAPTER 2. TAKE, POSSESSION, OR SALE

17 Article 1. General Provisions

18 **§ 26550. Season**

19 26550. California halibut (*Paralichthys californicus*) may be taken at any time.

20 **Comment.** Section 26550 continues former Fish and Game Code Section 8391 without
21 change.

22 **§ 26555. Size restrictions**

23 26555. (a) No California halibut may be taken, possessed, or sold that measures
24 less than 22 inches in total length.

25 (b) For purposes of subdivision (a), total length means the shortest distance
26 between the tip of the jaw or snout, whichever extends farthest while the mouth is
27 closed, and the tip of the longest lobe of the tail, measured while the halibut is
28 lying flat in natural repose, without resort to any force other than the swinging or
29 fanning of the tail.

30 **Comment.** Section 26555 continues former Fish and Game Code Section 8392 without
31 substantive change.

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Article 2. Halibut Bottom Trawl Permit

§ 26600. Permit requirement

26600. Any vessel using bottom trawl gear in state-managed halibut fisheries, as described in **subdivision (a) of Section 8841**, shall possess a valid California halibut bottom trawl permit that has not been suspended or revoked and that is issued by the department authorizing the use of trawl gear by that vessel for the take of California halibut.

Comment. Section 26600 continues former Fish and Game Code Section 8494(a) without substantive change.

§ 26605. Eligibility

26605. (a) A California halibut bottom trawl vessel permit shall be issued annually. In order to be eligible for that permit, an applicant shall have been issued a California halibut bottom trawl vessel permit in the immediately preceding permit year.

(b) The department shall not issue a California halibut bottom trawl vessel permit pursuant to this section for use in the California halibut fishery unless that vessel has landed a minimum of 200 pounds of California halibut and reported that landing on fish landing receipts as being caught with bottom trawl gear in at least one of the following:

- (1) At least two of the calendar years 1995 to 2003, inclusive.
- (2) At least one of the calendar years 1995 to 2003, inclusive, and from January 1, 2004, to February 19, 2004, inclusive.

Comment. Subdivision (a) of Section 26605 continues former Fish and Game Code Section 8494(b) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 8494(c) without change.

§ 26610. Transfer of permit

26610. Permits issued pursuant to this section may be transferred only if at least one of the following occur:

(a) The commission adopts a restricted access program for the fishery that is consistent with the commission's policies regarding restricted access to commercial fisheries.

(b) Prior to the implementation of a restricted access program, the permit is transferred to another vessel owned by the same permitholder of equal or less capacity, as determined by the department, and if the originally permitted vessel was lost, stolen, destroyed, or suffered a major irreparable mechanical breakdown. The department may not issue a permit for a replacement vessel if the department determines that the originally permitted vessel was fraudulently reported as lost, stolen, destroyed, or damaged. Only the permitholder at the time of the loss, theft, destruction, or irreparable mechanical breakdown of a vessel may apply to transfer the vessel permit. Evidence that a vessel is lost, stolen, or destroyed shall be in the

1 form of a copy of the report filed with the United States Coast Guard, or any other
2 law enforcement agency or fire department that conducted an investigation of the
3 loss.

4 (c) Prior to the implementation of a halibut trawl restricted access program, the
5 commission may consider requests from a vessel permit holder or his or her
6 conservator or estate representative to transfer a permit with the vessel if both of
7 the following conditions are met:

8 (1) The permit holder has died, is permanently disabled, or the permit holder is at
9 least 65 years of age and has decided to retire from commercial fishing.

10 (2) California halibut landings contributed significantly to the record and
11 economic income derived from the vessel, as determined by regulations adopted
12 by the commission. The commission may request information that it determines is
13 reasonably necessary from the permit holder or his or her heirs or estate for the
14 purpose of verifying statements in the request prior to authorizing the transfer of
15 the permit.

16 **Comment.** Section 26610 continues former Fish and Game Code Section 8494(d) without
17 change.

18 **§ 26615. Permit fees**

19 26615. The commission shall establish California halibut bottom trawl vessel
20 permit fees based on the recommendations of the department and utilizing the
21 guidelines outlined in **subdivision (b) of Section 711** to cover the costs of
22 administering this section. Prior to the adoption of a restricted access program
23 pursuant to Section 26610, fees may not exceed one thousand dollars (\$1,000) per
24 permit.

25 **Comment.** Section 26615 continues former Fish and Game Code Section 8494(e) without
26 substantive change.

27 **§ 26620. Application of federal permit**

28 26620. Individuals holding a federal groundfish trawl permit may retain and
29 land up to 150 pounds of California halibut per trip without a California halibut
30 trawl permit in accordance with federal and state regulations, including, but not
31 limited to, regulations developed under a halibut fishery management plan.

32 **Comment.** Section 26620 continues former Fish and Game Code Section 8494(f) without
33 substantive change.

34 **§ 26625. Commission regulation**

35 26625. The commission may adopt regulations to implement this chapter.

36 **Comment.** Section 26625 continues former Fish and Game Code Section 8494(h) without
37 substantive change.

1 § 26630. Inoperative date of article

2 26630. This article shall become inoperative upon the adoption by the
3 commission of a halibut fishery management plan in accordance with the
4 requirements of **Part 1.7 (commencing with Section 7050)**.

5 **Comment.** Section 26630 continues former Fish and Game Code Section 8494(g) without
6 substantive change.

7 **Staff Note.** The staff invites comment on whether existing Fish and Game Code Section
8 8494 (which would be continued by the sections of this article) should be discontinued as
9 obsolete based on satisfaction of the condition described in Section 8494(g) (which would be
10 continued by proposed Section 26630).

11 Article 3. License Revocation

12 § 26700. Revocation or suspension of license

13 26700. (d) Notwithstanding **Sections 12000, 12001, and 12002**, the commercial
14 fishing license of the master of a vessel may be revoked or suspended by the
15 commission, when requested by the department, for a period not to exceed one
16 year, upon the second conviction in three years of the master or the master's agent,
17 servant, employee, or any other person acting under the master's direction or
18 control, for a violation of any provision of this chapter.

19 (b) A master's license shall not be revoked unless both the first and second
20 convictions are for a violation by the master or a violation occurring when the
21 person convicted was acting as the master's agent, servant, employee, or acting
22 under the master's direction or control.

23 (c) The master of a vessel is the person on board the vessel who is in charge of
24 the vessel.

25 **Comment.** Section 26700 continues the part of former Fish and Game Code Section
26 12022.8(d)-(f) applicable to the provisions of this chapter, without substantive change.

27 **Staff Note.** Existing Fish and Game Code Section 12022.8(d) (which would be continued by
28 proposed Section 26700) indicates in paragraph (d)(1) that the subdivision applies to any
29 violation of a provision in "Article 13 (commencing with Section 8495) of Chapter 2 of Part 3 of
30 Division 6" of the existing code. However, subsequent to the last amendment of Section 12022.8,
31 existing Section 8494 (which would be continued by the proposed sections of Article 2 of this
32 chapter) was added to the "Article 13" referenced in existing Section 12022.8(d)(1).

33 **The staff invites comment on whether existing Section 12022.8(d) is intended to apply to**
34 **the provisions of existing Section 8494, as provided above.**

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PART 12. HERRING

TITLE 1. HERRING GENERALLY

§ 26750. Provisions not exclusive

26750. The provisions of this part are not intended to be exclusive. Other provisions that govern herring include, but are not limited to, the following provisions:

(a) **Section 7059.**

(b) **Section 8047.**

(b) **Section 8052.**

(b) **Section 8102.**

(b) **Section 8104.**

(b) **Section 8389.**

(b) **Section 8688.**

(b) **Section 10660.**

Comment. Section 26750 is new.

TITLE 2. COMMERCIAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 26800. Application of title

26800. For purposes of **Section 7600**, the provisions in this title are commercial provisions.

Comment. Section 26800 is new. It is added for drafting convenience.

CHAPTER 2. PERMIT

§ 26850. Permit required for take

26850. (a) Herring may be taken for a commercial purpose only under a permit, subject to regulations adopted by the commission.

(b) It is unlawful to take herring for roe on a vessel unless the operator holds a herring permit issued by the department pursuant to commission regulations.

Comment. Subdivision (a) of Section 26850 continues the first sentence of former Fish and Game Code Section 8550 without substantive change.

Subdivision (b) continues the first sentence of former Fish and Game Code Section 8552(a) without substantive change.

§ 26855. Limit on number of permits issued

26855. The commission may, whenever necessary to prevent overutilization, to ensure efficient and economic operation of the fishery, or to otherwise carry out this chapter, limit the total number of permits that are issued and the amount of

1 herring that may be taken under the permits. In limiting the total number of
2 permits, the commission shall take into consideration any restriction of the fishing
3 area and the safety of others who, for purposes other than fishing, use the waters
4 from which herring are taken.

5 **Comment.** Section 26855 continues the second and third sentences of former Fish and Game
6 Code Section 8550 without substantive change.

7 **§ 26860. Fee for permit**

8 26860. (a) A herring net permit granting the privilege to take herring with nets
9 for commercial purposes shall be issued to licensed commercial fishermen, subject
10 to regulations adopted under Sections 26850 and 26855, as follows:

11 (1) To any resident of this state to use gill nets, upon payment of a fee of two
12 hundred sixty-five dollars (\$265).

13 (2) To any nonresident to use gill nets, upon payment of a fee of one thousand
14 dollars (\$1,000).

15 (b) The commission shall not require a permit for a person to be a crewmember
16 on a vessel taking herring pursuant to this chapter.

17 **Comment.** Section 26860 continues former Fish and Game Code Section 8550.5 without
18 substantive change.

19 **Staff Note.** On September 18, 2015, a three judge panel of the Ninth Circuit Court of
20 Appeals, in *Marilley v. Bonham*, 802 F.3d 958 (9th Cir. 2015), held that the setting of a herring
21 net permit fee for nonresidents under existing Section 8550.5 (which would be continued by
22 Section 26860) higher than the fee for the same permit for residents violates the Privileges and
23 Immunities Clause of the United States Constitution. U.S. Const. art. IV, § 2, cl. 1.

24 **On February 26, 2016, the opinion of the three judge panel was ordered to be reheard en**
25 **banc. The staff has therefore proposed no revision to Section 8550.5 based on this decision**
26 **at this time.**

27 **§ 26865. Permit requirements**

28 26865. (a) No person may be issued more than one herring permit, and the
29 department shall not issue a herring permit to more than one person except as
30 provided in Section 26875.

31 (b) Herring permits shall only be issued to and shall be held only by a natural
32 person.

33 (c) Herring permits shall not be used as any form of security for any purpose,
34 including, but not limited to, financial or performance obligations.

35 (d) The permittee shall be on board the vessel at all times during herring fishing
36 operations, subject only to exceptions provided for in this code and regulations
37 adopted under this code.

38 **Comment.** Section 26865 continues former Fish and Game Code Section 8552(b)-(e) without
39 substantive change.

1 **§ 26870. Herring fishery experience points**

2 26870. (a) For purposes of this chapter, the experience points for a person
3 engaged in the herring roe fishery shall be based on the number of years holding a
4 commercial fishing license and the number of years having served as a
5 crewmember in the herring roe fishery, and determined by the sum of both of the
6 following:

7 (1) One point for each year in the previous 12 years (prior to the current license
8 year) that the person has held a commercial fishing license issued pursuant to
9 **Section 7852**, not to exceed a maximum of 10 points.

10 (2) Five points for one year of service as a paid crewmember in the herring roe
11 fishery, as determined pursuant to Section 26940, three points for a second year of
12 service as a paid crewmember, and two points for a third year as a paid
13 crewmember, beginning with the 1978–79 herring fishing season, not to exceed a
14 maximum of 10 points.

15 (b) The department shall maintain a list of all individuals possessing 20
16 experience points, and additional lists of all those persons holding two points or
17 more, grouped by number of points. The list shall be maintained annually and
18 shall be available from the department to all pointholders and to all herring
19 permittees. All pointholders are responsible for providing the department with
20 their current address and for verifying points credited to them by the department.

21 (c) A herring permittee may use the department’s list and rely upon that list in
22 making offers for transfer of his or her permit until the date of the annual
23 distribution of the new list. On and after the date of the annual revision of the list,
24 the permittee shall use the new list.

25 (d) The point provisions in this section are for purposes of sale of a permit, or
26 transfer to a partner of a co-owned permit.

27 **Comment.** Section 26870 continues former Fish and Game Code Section 8552.8 without
28 substantive change.

29 **§ 26875. Issuance of single permit to two individuals**

30 26875. (a) Notwithstanding Section 26865, a herring permit may be issued to
31 two individuals if one of the following criteria is met:

32 (1) The individuals are married to each other, or are registered domestic
33 partners, and file with the department a certified copy of their certificate of
34 marriage or registered domestic partner certificate, and a declaration under penalty
35 of perjury, or a court order, stating that the permit is community property.

36 (2) The individuals meet both of the following requirements:

37 (A) They are both engaged in the herring roe fishery, either by fishing aboard
38 the vessel, or by personally participating in the management, administration, and
39 operation of the partnership’s herring fishing business.

40 (B) The individuals are partners in a partnership, in which each holds 50 percent
41 ownership in a herring fishery operation, including a vessel or equipment, and that
42 partnership is demonstrated by any two of the following:

- 1 (i) A copy of a federal partnership tax return.
2 (ii) A written partnership agreement.
3 (iii) Joint ownership of a fishing vessel used in the herring fishery as
4 demonstrated on federal vessel license documents.

5 (b) For purposes of this section, a herring permit does not constitute a herring
6 fishing operation.

7 (c) A herring permit may be transferred to one of the partners, to be held
8 thereafter in that partner's name, only if that partner has not less than 10 herring
9 fishery experience points computed pursuant to paragraph (2) of subdivision (a) of
10 Section 26870 and there has been a death or retirement of the other partner, a
11 dissolution of partnership, or the partnership is dissolved by a dissolution of
12 marriage or registered domestic partnership, or a decree of legal separation.

13 (d) A transfer under this section shall be authorized only if proof that the
14 partnership has existed for three or more consecutive years is furnished to the
15 department, or a certified copy of a certificate of marriage or registered domestic
16 partnership is on file with the department, and the permit is community property as
17 provided in subdivision (a).

18 (e) The transferor of a permit shall not, by reason of the transfer, become
19 ineligible to participate further in the herring fishery or to purchase another permit.

20 (f) Notwithstanding subdivision (b), in the event of the death of one of the
21 partners holding a herring permit pursuant to this section, where the partnership
22 existed for longer than six months but less than three years, and the surviving
23 partner does not have the minimum points pursuant to subdivision (c) to qualify
24 for a permit transfer, the permit may be transferred on an interim basis for a period
25 of not more than 10 years to the surviving partner, if an application is submitted to
26 the department within one year of the deceased partner's death and the surviving
27 partner participates in the fishery for the purpose of achieving the minimum
28 number of herring fishery experience points to be eligible for a permit transfer
29 pursuant to Section 26880. The interim permit shall enable the surviving partner to
30 participate in the herring fishery. At the end of the interim permit period, the
31 surviving partner, upon application to the department, may be issued the permit if
32 he or she has participated in the fishery and gained the minimum number of
33 herring fishery experience points for a permit.

34 **Comment.** Section 26875 combines and continues the second sentence of former Fish and
35 Game Code Section 8552(a), and former Fish and Game Code Section 8552.6, without
36 substantive change. See Family Code Section 297.5(a) (registered domestic partners have same
37 rights, protections, and benefits under law as are granted to spouses).

38 **§ 26880. Transfer of permit generally**

39 26880. Notwithstanding **Section 1052**, a herring permit may be transferred from
40 a herring permittee to a nonpermittee who has 20 or more herring fishery
41 experience points, if the following conditions are satisfied:

1 (a) The permittee shall mail, by certified or registered mail, to the department
2 and to every individual listed on the department’s list of herring fishery
3 participants with maximum 20 or more herring fishery experience points, a notice
4 of intention to transfer the permittee’s herring permit, which shall provide all of
5 the following information:

6 (1) The gear type to be used under the herring permit.

7 (2) The name, address, and telephone number of the permittee and proposed
8 transferee.

9 (3) The amount of consideration, if any, sought by the transferor.

10 (b) Sixty days after mailing the notice, the transferor may transfer the permit to
11 any person having 20 or more herring fishery experience points without any
12 further notice, if the transfer occurs within six months of the date the original
13 notice was given. Transfers after that six-month period shall require another 60-
14 day notice of intention to be given.

15 (c) A true copy of the notice of intention to transfer a permit shall be filed with
16 the department by the transferor under penalty of perjury and shall be available for
17 public review.

18 (d) No person may hold more than one herring permit.

19 **Comment.** Section 26880 combines and continues the second sentence of former Fish and
20 Game Code Section 8552(a), and former Fish and Game Code Section 8552.2, without
21 substantive change.

22  **Staff Note.** Existing Fish and Game Code Section 8552.8 (which would be continued by
23 proposed Section 26870) appears to indicate that the maximum number of herring fishery
24 experience points that may be awarded is 20. However, existing Section 8552.2 (which would be
25 continued by proposed Section 26880) refers several times to persons having 20 “or more”
26 experience points.

27 **The staff invites comment that would clarify this issue.**

28 **§ 26885. Regulations relating to transfer of permits**

29 26885. The commission may, in consultation with representatives of the
30 commercial herring roe fishery, and after holding at least one public hearing, adopt
31 regulations intended to facilitate the transfer of herring permits, including, but not
32 limited to, regulations that would do the following:

33 (a) Allow an individual to own a single permit for each of the different herring
34 gillnet platoons in San Francisco Bay.

35 (b) Eliminate the herring fishery experience point system for qualifying for a
36 herring permit.

37 (c) Allow a herring permit to be passed from a parent to child, or between
38 spouses or registered domestic partners.

39 **Comment.** Section 26885 continues former Fish and Game Code Section 8552.3 without
40 substantive change. See Family Code Section 297.5(a) (registered domestic partners have same
41 rights, protections, and benefits under law as are granted to spouses).

1 **§ 26890. Transfer fee**

2 26890. (a) The department shall reissue a herring permit which has been
3 transferred pursuant to Section 26875 or 26880 upon payment of a transfer fee of
4 five thousand dollars (\$5,000) by the transferee of the permit.

5 (b) Transfer fees shall be deposited in the Fish and Game Preservation Fund,
6 and shall be expended for research and management activities to maintain and
7 enhance herring resources pursuant to **subdivision (a) of Section 8052**.

8 **Comment.** Section 26890 continues former Fish and Game Code Section 8552.7 without
9 substantive change.

10 **§ 26895. Drawing for expired permits**

11 26895. Herring permits that are revoked or not renewed may be offered by the
12 department to persons having 20 or more herring fishery experience points, in a
13 drawing held on the first Friday of August of each year.

14 **Comment.** Section 26895 continues former Fish and Game Code Section 8552.4 without
15 substantive change.

16 ☞ **Staff Note.** Existing Fish and Game Code Section 8552.8 (which would be continued by
17 proposed Section 26870) appears to indicate that the maximum number of herring fishery
18 experience points that may be awarded is 20. However, existing Sections 8552.4 (which would be
19 continued by proposed Section 26895) refers to persons having “20 or more” experience points.

20 **The staff invites comment that would clarify this issue.**

21 **§ 26900. Adjustment of fees**

22 26900. The commission, in consultation with the department and representatives
23 of the commercial roe herring fishery, and after holding at least one public
24 hearing, may adjust any fee related to a herring permit, including the fee for the
25 issuance of or transfer of a herring permit, to a level that will not discourage the
26 transfer of permits or limit entry into the fishery, and that will ensure sufficient
27 funds to cover reasonable department costs associated with the management of the
28 fishery, including research and enforcement costs.

29 **Comment.** Section 26900 continues former Fish and Game Code Section 8552.1 without
30 substantive change.

31 **§ 26905. Temporary substitution of crewmember**

32 26905. The commission, in adopting regulations for the commercial herring
33 fishery, shall adopt one or more regulations providing that if a permittee is ill or
34 injured, a crewmember aboard the vessel operated by the permittee may be
35 temporarily substituted as the permittee. The commission may require that proof
36 of the illness or injury be substantiated to the satisfaction of the department.

37 **Comment.** Section 26905 continues former Fish and Game Code Section 8554 without
38 substantive change.

1 **§ 26910. Periodic review of regulations and policies**

2 26910. The director shall periodically meet and confer with representatives of
3 the commercial herring roe fishery to review regulations and policies of the
4 commission and the department concerning that fishery, and to receive
5 recommendations on the regulation and management of that fishery. In particular,
6 those representatives and their legal counsel may recommend to the department,
7 for recommendation to the commission for adoption by the commission as
8 regulations, requirements for the payment of civil damages that may be imposed in
9 lieu of revoking or suspending a permit issued pursuant to this chapter, or for
10 violations of regulations adopted by the commission pertaining to the herring roe
11 fishery.

12 **Comment.** Section 26910 continues former Fish and Game Code Section 8555 without
13 substantive change.

14 **§ 26915. Regulation relating to use of gill nets**

15 26915. Notwithstanding any other provision of law, the commission shall
16 determine, by regulation, if drift or set gill nets may be used to take herring for a
17 commercial purpose. The commission may also determine, by regulation, the size
18 of the meshes of the material used to make those gill nets.

19 **Comment.** Section 26915 continues former Fish and Game Code Section 8556 without
20 substantive change.

21 **§ 26920. Determination relating to use of round haul nets in Districts 12 and 13**

22 26920. Notwithstanding any other provision of law, the commission shall
23 determine, by regulation, if round haul nets may be used to take herring in
24 **Districts 12 and 13**, and the conditions under which those nets may be used.

25 **Comment.** Section 26920 continues former Fish and Game Code Section 8557 without
26 substantive change.

27 **Staff Note.** Existing Fish and Game Code Section 8557 (which would be continued by
28 proposed Section 26920), in contrast with preceding Section 8556 (which would be continued by
29 proposed Section 26915), requires the Fish and Game Commission to “determine” whether round
30 haul nets may be used to take herring in specified districts, but does not require that determination
31 to be made “by regulation.” The staff believes the omission from Section 8557 was inadvertent,
32 and proposed Section 26920 would conform the language of the two sections by expressing
33 referencing a determination “by regulation.”

34 **The staff invites comment on that revision.**

35 **§ 26925. Herring research and management account**

36 26925. (a) There is established within the Fish and Game Preservation Fund a
37 herring research and management account.

38 (b) The funds in the account shall be expended for the purpose of supporting, in
39 consultation with the herring industry pursuant to Section 26910, department
40 evaluations of and research on herring populations in San Francisco Bay,

1 evaluations and research that may be required for Tomales Bay, Humboldt Bay,
2 and Crescent City, and for assisting in enforcement of herring regulations.

3 (c) The evaluations and research shall be for the following purposes:

4 (1) Determining the annual herring spawning biomass.

5 (2) Determining the condition of the herring resource, which may include its
6 habitat.

7 (3) Assisting the commission and the department in the adoption of regulations
8 to ensure a sustainable herring roe fishery.

9 (d) An amount, not to exceed 15 percent of the total funds in the account, may
10 be used for educational purposes regarding herring, herring habitat, and the
11 herring roe fishery.

12 (e) The funds in the account shall consist of the funds deposited pursuant to
13 Section 26935, and the funds derived from herring landing taxes allocated
14 pursuant to **subdivision (a) of Section 8052**.

15 (f) The department shall maintain internal accountability necessary to ensure
16 that all restrictions on the expenditure of the funds in the account are met.

17 **Comment.** Section 26925 continues former Fish and Game Code Section 8558 without
18 substantive change.

19 **§ 26930. San Francisco Bay herring stamp**

20 26930. (a) No person shall purchase or renew any permit to take herring for a
21 commercial purpose in San Francisco Bay, without first obtaining an annual
22 herring stamp from the department.

23 (b) The fee for the annual herring stamp shall be one hundred dollars (\$100).

24 **Comment.** Section 26930 continues the first two sentences of former Fish and Game Code
25 Section 8558.1(a) without substantive change.

26 **§ 26935. Funds to be deposited in herring research and management account**

27 26935. The following funds shall be deposited into the herring research and
28 management account:

29 (a) The amount of the difference between fees for nonresident and resident
30 herring net permits, collected pursuant to Section 26860.

31 (b) Fees for San Francisco Bay herring permit transfers, collected pursuant to
32 Section 26890.

33 (c) Fees for San Francisco Bay herring stamps, collected pursuant to Section
34 26930.

35 (d) One-half of all royalties collected by the department from the roe-on-kelp
36 fishery, pursuant to paragraph (2) of subdivision (f) of Section 164 of Title 14 of
37 the California Code of Regulations.

38 **Comment.** Subdivisions (a) and (b) of Section 26935 continue former Fish and Game Code
39 Section 8558.2 without substantive change.

40 Subdivision (c) continues the third sentence of former Fish and Game Code Section 8558.1(a)
41 without substantive change.

1 Subdivision (d) continues former Fish and Game Code Section 8558.3 without substantive
2 change.

3 **§ 26940. Proof of crewmember experience**

4 26940. The commission, in determining experience requirements for new
5 entrants into the herring fishery after January 1, 1987, shall require that any person
6 seeking a permit to operate a vessel to take herring and claiming crew experience
7 demonstrate, to the satisfaction of the department, proof of payment as a
8 crewmember in the herring fishery, based on tax records, or copies of canceled
9 checks offered and accepted as payment for service on a crew in the California
10 herring roe fishery.

11 **Comment.** Section 26940 continues former Fish and Game Code Section 8559 without
12 substantive change.

13 **§ 26945. Revocation for failure to report or file**

14 26945. The commission shall revoke the herring permit of a permittee convicted
15 of any of the following violations:

16 (a) Failing to report herring landings.

17 (b) Underreporting herring landings.

18 (c) Failing to correctly file with the department the offer or the acceptance for a
19 permit transferred pursuant to Section 26880.

20 **Comment.** Section 26945 continues former Fish and Game Code Section 8552.5 without
21 substantive change.

22 **§ 26950. Revocation or suspension of license**

23 26950. (a) Notwithstanding **Sections 12000, 12001, and 12002**, the commercial
24 fishing license of the master of a vessel may be revoked or suspended by the
25 commission, when requested by the department, for a period not to exceed one
26 year, upon the second conviction in three years of the master or the master's agent,
27 servant, employee, or any other person acting under the master's direction or
28 control, for a violation of any provision of this chapter.

29 (b) A master's license shall not be revoked unless both the first and second
30 convictions are for a violation by the master or a violation occurring when the
31 person convicted was acting as the master's agent, servant, employee, or acting
32 under the master's direction or control.

33 (c) The master of a vessel is the person on board the vessel who is in charge of
34 the vessel.

35 **Comment.** Section 26950 continues the part of former Fish and Game Code Section
36 12022.8(d)-(f) applicable to the provisions of this chapter, without substantive change.

37 **§ 26955. Commission regulation**

38 26955. The commission may make and enforce regulations necessary or
39 convenient for carrying out any power, authority, or jurisdiction conferred under
40 this chapter.

1 **Comment.** Section 26955 continues former Fish and Game Code Section 8553 without
2 substantive change.

3 CHAPTER 3. TAKE OF HERRING EGGS

4 **§ 27000. Permit to take herring eggs**

5 27000. Herring eggs may only be taken for a commercial purpose under a
6 revocable, nontransferable permit subject to regulations that the commission shall
7 prescribe.

8 **Comment.** Section 27000 continues the first sentence of former Fish and Game Code Section
9 8389(a) without substantive change.

10 **§ 27005. Payment of royalty**

11 27005. In addition to the license fees provided for in this code, every person
12 taking herring eggs shall pay a royalty, as the commission may prescribe, of not
13 less than fifty dollars (\$50) per ton of herring eggs taken.

14 **Comment.** Section 27005 continues the second sentence of former Fish and Game Code
15 Section 8389(a) without substantive change.

16 **§ 27010. Permit limitations**

17 27010. (a) Whenever necessary to prevent overutilization, to ensure efficient and
18 economic operation of the fishery, or to otherwise carry out this chapter, the
19 commission may limit the number of permits that are issued, and the amount of
20 herring eggs taken under those permits.

21 (b) In limiting the number of permits, the commission shall take into
22 consideration any restriction of the fishing area, and the safety of others who, for
23 purposes other than fishing, use the waters from which herring eggs are taken.

24 **Comment.** Subdivision (a) of Section 27010 continues former Fish and Game Code Section
25 8389(b) without substantive change.

26 Subdivision (b) continues former Fish and Game Code Section 8389(c) without substantive
27 change.

28 **Staff Note.** Existing Fish and Game Code Section 8389(b) (which would be continued by
29 proposed Section 27010(a)) provides that the Fish and Game Commission may place limits on
30 herring egg permits, among other reasons, in order to “carry out this article.” However, the article
31 in which Section 8389 appears, Article 9 (commencing with Section 8370) of Chapter 2 of Part 3
32 of Division 6 of the existing code, contains provisions governing the take of many different
33 saltwater and anadromous fish, and Section 8389 is the only provision in that article relating to
34 herring eggs.

35 Proposed Section 27010(a), in continuing Section 8389(b), would replace the reference to “this
36 article” with a reference to only the provisions in the proposed law that continue existing Section
37 8389. Because Section 8389 would be divided into the four sections in a chapter of the proposed
38 law continuing Section 8389(b), the reference has been changed to “this chapter.”

39 **The staff invites comment on the appropriateness of that revision.**

1 § **27015. Exception for incidental take of aquatic plants**

2 27015. Every person operating under a permit issued pursuant to Section 27000
3 is excepted from the provisions of **Chapter 6 (commencing with Section 6650)**
4 **of Part 1 of Division 6**, for aquatic plants taken incidental to the harvest of herring
5 eggs.

6 **Comment.** Section 27015 continues former Fish and Game Code Section 8389(d) without
7 substantive change.

8 **PART 13. MACKEREL**

9 **TITLE 1. MACKEREL GENERALLY**

10 § **27050. Provisions not exclusive**

11 27050. The provisions of this part are not intended to be exclusive. Other
12 provisions that govern mackerel include, but are not limited to, the following
13 provisions:

14 (a) **Section 8046.**

15 (b) **Section 8597.**

16 (c) **Section 8780.**

17 (d) **Section 10660.**

18 (e) **Section 10664.**

19 (f) **Section 10667.**

20 **Comment.** Section 27050 is new.

21 **TITLE 2. COMMERCIAL PROVISIONS**

22 § **27100. Application of title**

23 27100. For purposes of **Section 7600**, the provisions in this title are commercial
24 provisions.

25 **Comment.** Section 27100 is new. It is added for drafting convenience.

26 § **27105. Authorized take**

27 27105. Pacific mackerel may be taken under a revocable nontransferable permit
28 issued by the department to boat owners or operators under conditions prescribed
29 by the department.

30 **Comment.** Section 27105 continues former Fish and Game Code Section 8412 without
31 change.

32 § **27110. Federal fishery regulations**

33 27110. The department shall manage the Pacific mackerel resource in
34 conformance with the federal fishery regulations as recommended by the Pacific
35 Fishery Management Council and as adopted by the Secretary of Commerce.

36 **Comment.** Section 27110 continues former Fish and Game Code Section 8411 without

1 change.

2 **§ 27115. Unloading for use in cannery**

3 27115. (a) No mackerel intended for or used in any cannery shall be unloaded
4 from any vessel, except at a weighing or measuring device approved by the
5 Bureau of Weights and Measures.

6 (b) Those mackerel shall be weighed by a public weighmaster licensed as an
7 individual under the laws of this state, and a receipt as to that weight shall be
8 immediately issued by the weighmaster to the commercial fisherman at the time of
9 receipt of the products.

10 (c) Copies of the receipt shall be handled in the manner provided in **Chapter 3**
11 **(commencing with Section 14300)** and **Chapter 4 (commencing with Section**
12 **14500) of Title 9.**

13 **Comment.** Section 27115 continues the part of former Fish and Game Code Section 7702.1
14 applicable to mackerel without substantive change.

15 **PART 14. MARLIN**

16 **TITLE 1. MARLIN GENERALLY**

17 **§ 27150. Provisions not exclusive**

18 27150. The provisions of this part are not intended to be exclusive. Other
19 provisions that govern marlin include, but are not limited to, the following
20 provisions:

21 (a) **Section 7856.**

22 (b) **Section 8385.**

23 (c) **Section 8582.**

24 (d) **Section 8684.**

25 (e) **Section 9029.**

26 **Comment.** Section 27150 is new.

27 **§ 27155. Transport of marlin meat out of state**

28 27155. Marlin meat may not be transported out of this state.

29 **Comment.** Section 27155 continues former Fish and Game Code Section 2354 without
30 substantive change.

31 **§ 27160. Department monitoring of take**

32 27160. (a) The department shall develop a voluntary participation program for
33 the use of departmental observers on board vessels to monitor the taking of marlin
34 by persons engaged in sport fishing.

35 (b) The department shall, in accordance with **Section 1012**, procure insurance
36 against the liability of the owners or operators of vessels boarded by observers in

1 the event of injury to or death of any observer in the course and scope of
2 employment as an observer.

3 **Comment.** Section 27160 continues former Fish and Game Code Section 7123 without
4 substantive change.

5 TITLE 2. COMMERCIAL PROVISIONS

6 § 27200. Application of title

7 27200. For purposes of **Section 7600**, the provisions in this title are commercial
8 provisions.

9 **Comment.** Section 27200 is new. It is added for drafting convenience.

10 § 27205. Marlin meat

11 27205. Except where Section 27210 has been complied with, marlin meat,
12 whether fresh, smoked, canned, or preserved by any means, shall not be bought or
13 sold, or possessed or transported for the purpose of sale.

14 **Comment.** Section 27205 continues former Fish and Game Code Section 8393(a) without
15 substantive change.

16 § 27210. Importation for producing fish cakes

17 27210. (a) Notwithstanding the provisions of section 27205, black marlin
18 (*Makaira Indica*) may be imported into this state for the purpose of processing
19 (manufacturing) a product commonly known as fish cakes for human
20 consumption.

21 (b) All black marlin (*Makaira Indica*) imported into this state must be in an
22 identifiable condition, and must be accompanied by a bill of lading, showing the
23 name of the consignor, the consignee, and the weight or number of fish shipped. A
24 copy of the bill of lading must be delivered to the nearest office of the department
25 either prior to or no later than two days after receipt of the fish.

26 (c) No black marlin (*Makaira Indica*) imported into California may leave the
27 premises of the original consignee unless written permission is received from the
28 department, or unless processed into the form of the product commonly known as
29 fish cakes.

30 **Comment.** Section 27210 continues former Fish and Game Code Section 8393(b) without
31 substantive change.

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PART 15. SABLEFISH

TITLE 1. SABLEFISH GENERALLY

§ 27250. Groundfish

27250. For the purposes of Part 9 (commencing with Section 26300), a sablefish is a groundfish.

Comment. Section 27250 is new.

Staff Note. Based on staff research, it appears that a sablefish is a groundfish. **The staff invites comment on whether that is correct.**

§ 27255. Provisions not exclusive

27255. The provisions of this part are not intended to be exclusive. Other provisions that govern sablefish include, but are not limited to, the following provisions:

- (a) **Section 8043.**
- (b) **Section 8047.**
- (c) **Section 9001.7.**
- (d) **Section 9006.**

Comment. Section 27255 is new.

TITLE 2. COMMERCIAL PROVISIONS

§ 27300. Application of title

27300. For purposes of **Section 7600**, the provisions in this title are commercial provisions.

Comment. Section 27300 is new. It is added for drafting convenience.

§ 27305. Required permit

27305. Sablefish may be taken under a general trap permit in ocean waters between a line extending due west true from Point Arguello in Santa Barbara County and the United States-Mexico international boundary line, if all of the following criteria are also met:

- (a) The trap shall be six feet or less in its greatest dimension.
- (b) The mesh of any trap used for sablefish pursuant to this section shall measure not less than two inches by two inches.
- (c) The traps may be used only in waters 200 fathoms or deeper.
- (d) No permittee may possess a sablefish trap and any other commercial fishing gear aboard a vessel at the same time, except that spot prawn traps may be possessed during spot prawn trap open fishing periods as established by the commission, if the permittee has a valid spot prawn trap vessel permit that has not been suspended or revoked.

1 (v) **Section 9029.5.**

2 (w) **Section 13005.**

3 (x) **Section 15007.**

4 (y) **Section 15605.**

5 (z) **Section 16000.**

6 (aa) **Section 16500.**

7 (bb) **Section 16520.**

8 (cc) **Section 16531.**

9 (dd) **Section 16532.**

10 **Comment.** Section 27355 is new.

11 **§ 27360. Legislative determination**

12 27360. (a) The Legislature finds and declares all of the following:

13 (1) The commercial fishing industry of the North Coast has been greatly affected
14 by decisions made by federal and state agencies concerning the health of the
15 salmon resource and the consequent shortening or closing of the season, further
16 impacting the already economically depressed region.

17 (2) Sportfishing on the North Coast, a staple of the tourism industry of the
18 region, could be substantially affected by the limitations of the salmon seasons.

19 (3) The method of determining salmon escapement counts on only the Klamath
20 River is inadequate for determining the overall health of the salmon resource in
21 northern California waters and consequent decisions regarding the commercial,
22 sport, and Indian salmon fisheries in those waters because it does not take into
23 consideration the escapement figures on the Eel River and the Smith River.

24 (b) The department shall use present assessment methods to assess the salmon
25 escapement count on the Eel River and the Smith River, as well as the Klamath
26 River, systems, employing out-of-work fishermen, where possible, to do the
27 counts with department personnel in supervisory capacities. Those figures shall be
28 used by the commission and the department in all reports, recommendations, and
29 decisions concerning the establishment of the commercial and sportfishing seasons
30 in the waters of the state and in all recommendations to the Pacific Fishery
31 Management Council or other regulatory agencies. This program shall be a
32 priority for funding under the Fisheries Restoration Act of 1985 (**Chapter 8**
33 **(commencing with Section 2760)** added to Division 3 of the Fish and Game Code
34 by Senate Bill No. 400 of the 1985–86 Regular Session).

35 (c) The department shall install sonar fish counting devices on the Klamath
36 River system as a three-year test program to determine the accuracy of the devices,
37 and shall make recommendations to the Legislature by January 1, 1990, as to their
38 accuracy and whether they should be installed on other river systems. Present
39 assessment methods shall continue on the Klamath River system during the test
40 period as a control mechanism.

41 **Comment.** Section 27360 continues former Fish and Game Code Section 1000.6 without
42 substantive change.

CHAPTER 2. TAKE OR POSSESSION

§ 27400. Salmon spawning areas

27400. The commission may designate salmon spawning areas. It is unlawful to take salmon in any such spawning area, or within 250 feet of any salmon spawning station.

Comment. Section 27400 continues former Fish and Game Code Section 310 without change.

§ 27405. Hook other than in mouth

27405. (a) It is unlawful, in inland waters, to kill or retain in possession any chinook, coho, or kokanee salmon that has not taken the bait or lure in its mouth.

(b) Any chinook, coho, or kokanee salmon hooked in inland waters other than in its mouth shall be released unharmed.

Comment. Section 27405 restates the part of former Fish and Game Code Section 5514 applicable to salmon without substantive change.

Staff Note. Proposed Section 27405 is intended to restate the part of existing Fish and Game Code Section 5514 applicable to salmon to improve the clarity of that provision, without changing its substantive effect. The existing provision reads as follows:

“5514. (a) It is unlawful to kill or retain in possession any chinook, coho, or kokanee salmon or any steelhead that has not taken the bait or lure in its mouth, in inland waters.

(b) Any chinook, coho, or kokanee salmon or any steelhead hooked other than in its mouth in inland waters shall be released unharmed.”

In the existing section, the placement of the phrase “in inland waters” creates possible ambiguity as to whether the section is meant to apply generally to persons fishing in inland waters, or to specified salmon that were not hooked in their mouths while in inland waters. The staff believes the former interpretation was intended, and proposed Section 27405 would make that interpretation express.

The staff invites comment on whether the restatement of Section 5514 would cause any substantive change in its meaning.

§ 27410. Conformity with federal law

27410. The commission may prohibit the taking or possessing of salmon in the same manner as the taking or possessing of salmon is prohibited by federal law or by rules or regulations adopted by the United States Secretary of Commerce, notwithstanding any other provision of this code.

Comment. Section 27410 continues former Fish and Game Code Section 316.5 without change.

CHAPTER 3. IMPORTATION

§ 27450. Importation of undersized salmon

27450. (a) It is unlawful to import into this state for commercial purposes any salmon of smaller size than can be legally taken under regulations of either the Pacific Fishery Management Council or the state of landing.

1 (b) Subdivision (a) does not apply to domestically reared salmon, defined by
2 commission regulations to include salmon that have returned to a hatchery or
3 licensed artificial collection facility, if imported under regulations established by
4 the commission.

5 **Comment.** Section 27450 continues former Fish and Game Code Section 2361 without
6 substantive change.

7 CHAPTER 4. COOPERATIVE SALMON AND STEELHEAD REARING FACILITIES

8 **§ 27500. Department agreement**

9 27500. (a) The department is authorized to enter into agreements with counties,
10 nonprofit groups, private persons, individually or in combination, for the
11 management and operation of rearing facilities for salmon and steelhead. All
12 agreements shall be in accordance with the policies of the commission and the
13 criteria of the department which govern the operation of those facilities under
14 those agreements.

15 (b) The purpose for operating the facilities shall be to provide additional fishing
16 resources and to augment natural runs.

17 **Comment.** Section 27500 continues the part of former Fish and Game Code Section 1200
18 applicable to salmon without substantive change.

19 **§ 27505. Demonstration of financial ability**

20 27505. (a) An applicant who wishes to enter into an agreement to operate a
21 rearing facility shall demonstrate, to the satisfaction of the department prior to
22 executing the agreement, the applicant's financial ability to properly operate the
23 rearing facility.

24 (b) The department shall develop and specify the means for an applicant to make
25 such a demonstration.

26 **Comment.** Section 27505 continues the part of former Fish and Game Code Section 1201
27 applicable to salmon without substantive change.

28 **§ 27510. Property of state**

29 27510. All fish handled or released under authority of this chapter are the
30 property of the state and may be taken only after their release into the wild and
31 under the authority of a sport or commercial fishing license.

32 **Comment.** Section 27510 continues the part of former Fish and Game Code Section 1202
33 applicable to salmon without substantive change.

34 **§ 27515. Release determined by Commission**

35 27515. The release of fish reared in facilities pursuant to this chapter shall be
36 made in accordance with the policy of the commission.

37 **Comment.** Section 27515 continues the part of former Fish and Game Code Section 1203
38 applicable to salmon without substantive change.

1 (1) Modification of existing water crossings for the purposes of eliminating a
2 barrier to fish passage. Modification includes the removal of road crossings,
3 replacement of culverts, or both.

4 (2) Restoration of eroded or denuded streambanks by utilizing predominantly
5 nonrock bioengineering practices and revegetating stream corridors with native
6 riparian species. Restoration shall be focused on promoting tree establishment
7 along the active channel and on streambanks for the purposes of bank
8 stabilization, bank development, and live wood complexity.

9 (3) Wood placement that benefits naturally reproducing fish stocks by creating
10 or enhancing fish habitat, increasing stream complexity, or both.

11 (c) “Coho salmon recovery plans” means the department’s Recovery Strategy
12 for California Coho Salmon, the National Marine Fisheries Service’s Recovery
13 Plan for the Evolutionary Significant Unit of Central Coast Coho Salmon, the
14 National Marine Fisheries Service’s Recovery Plan for the Southern
15 Oregon/Northern California Coast Evolutionary Significant Unit of Coho Salmon,
16 or subsequently adopted coho salmon recovery plans.

17 (d) “Fish passage guidelines” means the department’s Coho Salmon Stream
18 Restoration Manual, the National Marine Fisheries Service, Southwest Region,
19 Guidelines for Salmonid Passage at Stream Crossings, either of those documents
20 as they may be subsequently amended or updated, or salmonid fish passage project
21 guidelines subsequently adopted by the department, the National Marine Fisheries
22 Service, or both.

23 (e) “Project proponent” means a person, public agency, or nonprofit
24 organization seeking to implement a coho salmon habitat enhancement project.

25 **Comment.** Section 27605 continues former Fish and Game Code Section 6952 without
26 substantive change.

27 **§ 27610. Required elements of project**

28 27610. (a) Notwithstanding any other provision of law, the director shall
29 approve a coho salmon habitat enhancement project if the project will maintain
30 existing levels of human health and safety protection, including, but not limited to,
31 flood protection, and meets all of the following requirements:

32 (1) The project is consistent with fish passage guidelines and coho salmon
33 recovery plans.

34 (2) The primary project purpose is for voluntary restoration.

35 (3) The project is no larger than five acres or 500 linear feet in size, measured by
36 calculating the direct area of impact.

37 (4) Completion of all phases of the coho salmon habitat enhancement project
38 will not exceed five years.

39 (5) The project will not result in cumulative negative environmental impacts that
40 are significant when viewed in connection with the effects of past, current, or
41 probable future projects.

1 (b) The director's approval of a coho salmon habitat enhancement project
2 pursuant to subdivision (a) shall be in lieu of any other permit, license, or other
3 approval issued by the department, including, but not limited to, those issued
4 pursuant to **Chapter 1.5 (commencing with Section 2050) of Division 3,**
5 **Chapter 10 (commencing with Section 1900) of Division 2, and Chapter 6**
6 **(commencing with Section 1600) of Division 2.**

7 (c) The director's approval of a coho salmon habitat enhancement project
8 pursuant to subdivision (a) shall constitute an action taken by a regulatory agency,
9 as authorized by state law, to ensure the maintenance, restoration, or enhancement
10 of a natural resource where the regulatory process involves procedures for
11 protection of the environment.

12 (d) Within 60 days after the director receives a written request to approve a coho
13 salmon habitat enhancement project containing the information required pursuant
14 to subdivision (e), the director shall determine whether substantial evidence exists
15 that the coho salmon habitat enhancement project is consistent with subdivision
16 (a).

17 (e) A written request to approve a coho salmon habitat enhancement project
18 shall contain all of the following:

19 (1) The name, address, title, organization, telephone number, and electronic mail
20 address of the natural person or persons who will be the main point of contact for
21 the project proponent.

22 (2) A full description of the coho salmon habitat enhancement project that
23 includes the design criteria used for the project, restoration or enhancement
24 methods, an estimate of temporary restoration or enhancement-related disturbance,
25 project schedule, and how the project will result in a net benefit to coho salmon
26 and other affected species.

27 (3) A map clearly identifying the project location and photographs of the project
28 site.

29 (4) An assessment of the project area that provides a description of existing flora
30 and fauna and the potential presence of sensitive species or habitat.

31 (5) A description of environmental protection measures incorporated into the
32 project design, including, but not limited to, measures to avoid and minimize
33 impacts to water quality and potentially present species protected by state law, so
34 that no potentially significant negative environmental impacts will result from the
35 project.

36 (6) Substantial evidence to support a conclusion that the project meets the
37 criteria set forth in this section. Substantial evidence shall cite relevant design
38 criteria and environmental protection measures that are set forth in the fish passage
39 guidelines and coho salmon recovery plans.

40 (f) If the director determines at any time that the project is no longer consistent
41 with subdivision (a), due to a material change between the project as submitted
42 and the project being implemented or a change in environmental circumstances in
43 the area of implementation, the director shall notify the project proponent in

1 writing and project implementation shall be suspended or approval pursuant to this
2 chapter revoked. Written notice from the director shall be delivered in person or
3 by certified mail to the project proponent and shall specify the reasons why
4 ministerial approval of the project was suspended or revoked. The approval for a
5 project shall not be revoked pursuant to this subdivision unless it has first been
6 suspended pursuant to this subdivision.

7 (g) Within 30 days of receipt of a notice of suspension, the project proponent
8 may file an objection with the director. Any objection shall be in writing and state
9 the reasons why the project proponent objects to the suspension. The director shall
10 revoke approval or lift the suspension of project implementation within 30 days
11 after the end of the objection.

12 **Comment.** Section 27610 continues former Fish and Game Code Section 6953 without
13 substantive change.

14 **§ 27615. Coho Salmon Recovery Account**

15 27615. (a) The Coho Salmon Recovery Account is hereby created in the Fish
16 and Game Preservation Fund.

17 (b) The department may enter into an agreement to accept funds from any public
18 agency, person, business entity, or organization to achieve the purposes of this
19 chapter. The department shall deposit any funds so received in the account. The
20 funds received shall supplement existing resources for projects and programs that
21 enhance the recovery of coho salmon.

22 (c) The department may impose a schedule of fees for projects, based on the cost
23 of a project, sufficient to recover all reasonable administrative and implementation
24 costs of the department relating to the project, but not to exceed fees adopted by
25 the department pursuant to **Chapter 6 (commencing with Section 1600) of**
26 **Division 2** for standard lake or streambed alteration agreements for projects of
27 comparable cost. The department shall deposit fee revenues in the account.

28 (d) Moneys in the account shall be available to the department, upon
29 appropriation by the Legislature, for the purposes of administering and
30 implementing this chapter.

31 **Comment.** Section 27615 continues former Fish and Game Code Section 6954 without
32 substantive change.

33 **§ 27620. Emergency regulations**

34 27620. (a) The department may adopt emergency regulations for the
35 implementation of this chapter.

36 (b) A regulation adopted pursuant to this section or thereafter amended, and any
37 subsequent adjustment to that adoption or amendment, shall be adopted by the
38 department in accordance with Chapter 3.5 (commencing with Section 11340) of
39 Part 1 of Division 3 of Title 2 of the Government Code.

1 (c) The adoption of a regulation pursuant to this section is an emergency, and
2 shall be considered by the Office of Administrative Law as necessary for the
3 immediate preservation of the public peace, health, safety, and general welfare.

4 (d) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
5 Division 3 of Title 2 of the Government Code, any emergency regulation adopted
6 by the department pursuant to this section shall remain in effect until revised by
7 the department.

8 **Comment.** Section 27620 continues former Fish and Game Code Section 6955 without
9 substantive change.

10 **§ 27625. Effective date of operation**

11 27625. This chapter shall remain in effect only until January 1, 2018, and as of
12 that date is repealed, unless a later enacted statute that is enacted before January 1,
13 2018, deletes or extends that date.

14 **Comment.** Section 27625 continues former Fish and Game Code Section 6956 without
15 substantive change.

16 **TITLE 2. COMMERCIAL PROVISIONS**

17 **CHAPTER 1. PRELIMINARY PROVISIONS**

18 **§ 27700. Application of title**

19 27700. For purposes of **Section 7600**, the provisions in this title are commercial
20 provisions.

21 **Comment.** Section 27700 is new. It is added for drafting convenience.

22 **§ 27705. Definitions**

23 27705. The following definitions govern the construction of this title:

24 (a) “Agent” means the person designated in writing by the owner as the owner’s
25 representative.

26 (b) “Appeal” means a request for reconsideration of an action of the review
27 board, the department, or the commission, pursuant to this title.

28 (c) “Change of ownership” means the transfer of ownership of a permitted
29 vessel to a new owner.

30 (d) “Commercial salmon vessel permit” means an annual permit issued by the
31 department to an owner of a commercial fishing vessel for use of that vessel to
32 take salmon for commercial purposes and shall not be considered personal
33 property.

34 (e) “Fishing potential” means the capability and capacity for harvesting salmon
35 of a particular commercial fishing vessel. “Fishing potential” includes, but is not
36 limited to, a rating based upon factors such as size, seaworthiness, propulsion
37 system, hold size, and hull design.

1 (f) “Permit” means a commercial salmon vessel permit as defined in subdivision
2 (d).

3 (g) “Permitted vessel” means a commercial fishing vessel for which a permit is
4 currently valid.

5 (h) “Replacement vessel” means a commercial fishing vessel for the use of
6 which a permit is proposed to be transferred pursuant to this title.

7 (i) “Review board” means the commercial salmon fishing review board created
8 pursuant to **Section 8247**.

9 (j) “Transfer” means the issuance of a permit for use of a replacement vessel.

10 **Comment.** Section 27705 generalizes former Fish and Game Code Section 8231 without
11 substantive change.

12 **Staff Note.** Existing Fish and Game Code Section 8231 provides the definitions set forth in
13 proposed Section 27705, but only for purposes of the article in which Section 8231 appears
14 (Article 4.5 (commencing with Section 8230) of Chapter 2 of Part 3 of Division 6). Proposed
15 Section 27705 would generalize the definitions in existing Section 8231 so that they apply to all
16 commercial salmon fishing provisions in this proposed title.

17 **The staff invites comment on whether that generalization would be problematic.**

18 CHAPTER 2. COMMERCIAL SALMON TROLLERS ENHANCEMENT AND
19 RESTORATION PROGRAM

20 **§ 27750. Declaration of legislative intent**

21 27750. (a) It is the intent of the Legislature that the department use the moneys
22 from the sale of commercial fishing salmon stamps allocated pursuant to
23 subdivision (b) of Section 7861, and the matching share contributed by the
24 department, to raise approximately two million chinook salmon annually to
25 yearling size, to contribute to the replenishing of California’s salmon resource. In
26 no case shall moneys from the General Fund be used to match the salmon stamp
27 revenues expended for this program.

28 (b) It is the further intent of the Legislature that the salmon stamp fee authorized
29 in subdivision (b) of **Section 7861** shall generate revenues equal to one-half the
30 amount necessary to raise this number of salmon to yearling size.

31 **Comment.** Section 27750 continues former Fish and Game Code Section 7861.3 without
32 substantive change.

33 **§ 27755. Commercial fishing salmon stamp requirement**

34 27755. (a) Except as provided in subdivision (f) or (g), no person who is 18
35 years of age or more and less than 70 years of age, on or before April 1 of the
36 current license year, shall take salmon for a commercial purpose or be on board a
37 vessel on which salmon are taken for a commercial purpose while salmon are
38 being taken or transported, unless that person has a commercial fishing salmon
39 stamp issued pursuant to this section affixed to his or her commercial fishing
40 license.

1 (b) Except as provided in subdivision (f) or (g), the operator of a vessel on
2 which salmon are taken for a commercial purpose shall not permit a person on
3 board that vessel while salmon are being taken or transported, unless that person
4 was less than 18 years of age or 70 years of age or more on April 1 of the current
5 license year or that person has a commercial fishing salmon stamp affixed to the
6 person's commercial fishing license.

7 (c) Except as provided in this subdivision, the department shall issue a
8 commercial fishing salmon stamp, upon application and payment of the fee of
9 eighty-five dollars (\$85). For any commercial salmon season preceded by a
10 commercial salmon season in which the commercial troll salmon landings in this
11 state equal or exceed 3,000,000 pounds dressed weight, as determined by the
12 department, the fee shall be increased by twelve dollars and fifty cents (\$12.50)
13 for every 250,000 pounds over 3,000,000 pounds of dressed weight landings,
14 except that the total fees as adjusted shall not exceed two hundred sixty dollars
15 (\$260).

16 (d) A commercial fishing salmon stamp is valid during the commercial salmon
17 season of the year in which it was issued.

18 (e) Upon application and payment of an additional fee equal to that prescribed in
19 subdivision (c), the department may issue an additional commercial fishing
20 salmon stamp for a crewmember to the owner or operator of a vessel who holds a
21 commercial fishing salmon stamp.

22 (f) Notwithstanding subdivision (a), one crewmember of a vessel for which a
23 commercial fishing salmon stamp is issued pursuant to subdivision (e) may be
24 aboard that vessel and take salmon for a commercial purpose as a crewmember on
25 that vessel without obtaining a commercial fishing salmon stamp, under the
26 following conditions:

27 (1) The crewmember is designated by name and commercial fishing license
28 number on a form furnished by the department before salmon are taken on the
29 vessel when that crewmember is aboard.

30 (2) The crewmember has a valid commercial fishing license issued under
31 **Section 7850**.

32 (3) The commercial fishing salmon stamp for the crewmember is affixed to the
33 form prescribed in paragraph (1) on which the vessel registration number of the
34 vessel is entered, and on which the crewmember who is exempted by this
35 subdivision is designated by the last entered name and commercial fishing license
36 number.

37 (g) Persons who are exempt from the license requirements, or who are not
38 required to be licensed, pursuant to **Section 7850**, are exempt from the
39 requirements of this section.

40 **Comment.** Section 27755 continues former Fish and Game Code Section 7860 without
41 substantive change.

1 § 27760. Use of fees from commercial fishing salmon stamps

2 27760. (a) After deducting the administrative costs for issuing commercial
3 fishing salmon stamps, the department shall deposit the fees received pursuant to
4 **Section 7860** in the Commercial Salmon Stamp Dedicated Subaccount, which is
5 hereby established in the Fish and Game Preservation Fund. The money in the
6 subaccount shall be available to the department, upon appropriation by the
7 Legislature, for new or expanded salmon restoration and enhancement programs in
8 the state that will serve to increase ocean salmon landings. No money in this
9 subaccount shall be used in lieu of other funds appropriated for salmon restoration
10 and enhancement programs authorized by law on or before January 1, 1988.

11 (b) Thirty dollars (\$30) of the fees collected for each commercial fishing salmon
12 stamp issued shall be allocated by the department to be used for raising chinook
13 salmon to a yearling size, at which size they shall be released into state waters.
14 The amount of salmon stamp revenues expended for this purpose in any fiscal year
15 shall not exceed the amount expended by the department for the same purpose
16 during the same period from other funds. The calculation of the amount expended
17 by the department for this purpose shall not include expenditures made by the
18 department for which reimbursements are received from state or federal agencies,
19 public utilities, or private entities for raising chinook salmon to yearling size as
20 part of a fish mitigation program instituted to compensate for the adverse effect of
21 a dam on natural salmon production. If the department expends no funds other
22 than moneys collected from the sale of commercial fishing salmon stamps or
23 moneys for which reimbursements are received as part of an anadromous fish
24 mitigation program for the raising of chinook salmon to yearling size within the
25 period of a fiscal year, the fees prescribed in **Section 7860** shall be reduced by an
26 amount equivalent to that portion of the commercial fishing salmon stamp
27 program, as specified in this subdivision.

28 (c) If the salmon stamps issued pursuant to **Section 7860** raise more money for
29 the purpose of subdivision (b) than is necessary to match the funds expended by
30 the department during any fiscal year from other funds, then the excess salmon
31 stamp revenue allocated pursuant to subdivision (b) shall be carried over into the
32 following fiscal year.

33 (d) The department shall post on its Internet Web site an accounting of the
34 projects undertaken with funds from the Commercial Salmon Stamp Dedicated
35 Subaccount, and the costs incurred to administer the program. At a minimum, the
36 Internet Web site shall list the project title, the applicant, a brief description of the
37 project, the amount approved, and the status of the project.

38 (e) Any moneys that were in the Commercial Salmon Stamp Account as of
39 March 14, 2013, and that were retained in the Fish and Game Preservation Fund,
40 shall be transferred to the Commercial Salmon Stamp Dedicated Subaccount.

41 (e) Not more than 15 percent of the funds expended pursuant to this section may
42 be used to pay the costs incurred in the administration of the program.

1 **Comment.** Subdivisions (a) through (d) of Section 27760 continue former Fish and Game
2 Code Section 7861 without substantive change.

3 Subdivision (e) continues former Fish and Game Code Section 7861.1 without substantive
4 change.

5 **§ 27765. Source of other funds for program**

6 27765. (a) Notwithstanding any other law, the department may receive on behalf
7 of the Commercial Salmon Trollers Enhancement and Restoration Program, for
8 deposit in the Commercial Salmon Stamp Dedicated Subaccount in the Fish and
9 Game Preservation Fund established pursuant to **Section 7861**, funds from sources
10 in addition to funds derived from the sale of commercial fishing salmon stamps,
11 including, but not limited to, grants from the federal government, grants from
12 private foundations, money disbursed from court settlements, and donations and
13 bequeaths from individuals.

14 (b) The additional nonfederal funds shall not be deposited in the Commercial
15 Salmon Stamp Dedicated Subaccount unless the person or entity providing the
16 funds specifically designates in writing, prior to or at the time of transmittal of the
17 funds to the department, that the funds are intended solely for deposit to that
18 subaccount.

19 (c) Funds received by the department that are not designated at the time of
20 receipt as being intended solely for deposit to the Commercial Salmon Stamp
21 Dedicated Subaccount shall be deposited in the Fish and Game Preservation Fund.

22 **Comment.** Section 27765 continues former Fish and Game Code Section 7861.2 without
23 substantive change.

24 **§ 27770. Allocation of funds**

25 27770. In consultation with the Commercial Salmon Trollers Advisory
26 Committee, the department may allocate funds from the Commercial Salmon
27 Stamp Dedicated Subaccount in the Fish and Game Preservation Fund for the
28 following purposes:

29 (a) For restoration projects to assist in the recovery of salmon stocks listed as
30 threatened or endangered under **Chapter 1.5 (commencing with Section 2050) of**
31 **Division 3**, or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

32 (b) As matching funds for federal salmon restoration moneys.

33 **Comment.** Section 27770 continues former Fish and Game Code Section 7861.5 without
34 change.

35 **§ 27775. Funding priority**

36 27775. A priority for funding shall be given to programs and projects restoring,
37 enhancing, and protecting salmon streams with funds appropriated pursuant to
38 subparagraph (A) of paragraph (1) of subdivision (e) of Section 5907 of the Public
39 Resources Code, which employ fishermen who are unemployed or underemployed
40 as a result of commercial fishing restrictions within and immediately adjacent to
41 the Klamath Management Zone imposed by federal laws or regulations.

1 **Comment.** Section 27775 continues former Fish and Game Code Section 7861.4 without
2 substantive change.

3 **§ 27780. Advisory Committee**

4 27780. (a) A Commercial Salmon Trollers Advisory Committee shall be
5 established consisting of six members selected by the director, as follows:

6 (1) One member shall be chosen from the personnel of the department.

7 (2) Four persons shall be selected, with alternates, from a list submitted by a
8 fishermen’s organization deemed to represent the commercial salmon fishermen of
9 California.

10 (3) One member shall be selected, with an alternate, from lists submitted by
11 individual commercial passenger fishing boat operators or by organizations
12 deemed to represent the commercial passenger fishing boat operators of
13 California.

14 (b) The term of appointment to the committee shall be for two years.

15 (c) Necessary and proper expenses, if any, and per diem shall be paid committee
16 members from the special account created pursuant to subdivision (a) of **Section**
17 **7861**. The rate of per diem shall be the same as the rate established pursuant to
18 Section 8902 of the Government Code.

19 (d) The committee shall recommend programs and a budget from the special
20 account to the department.

21 **Comment.** Section 27780 continues former Fish and Game Code Section 7862 without
22 substantive change.

23 **§ 27785. Creation of artwork or related material for sale**

24 27785. (a) The Commercial Salmon Trollers Advisory Committee may also
25 recommend to the director that a nonprofit organization or the California Salmon
26 Council be authorized to create or contract to create salmon or salmon fishing
27 artwork and other materials based on that artwork, including, but not limited to, a
28 stamp, and offer those items for sale to the public during 2003 and thereafter, for
29 the purpose of augmenting funding for the Commercial Salmon Trollers
30 Enhancement and Restoration Program established under this chapter.

31 (b) The committee may not recommend a nonprofit organization or the
32 California Salmon Council as authorized under subdivision (a), unless all of the
33 following conditions are met:

34 (1) The proposed creation and sale of the artwork is pursuant to a written
35 business plan presented to the committee.

36 (2) The committee determines that a reasonable share of the sales of any stamp
37 will be remitted to the department for deposit into the Commercial Salmon Stamp
38 Dedicated Subaccount established in the Fish and Game Preservation Fund under
39 **Section 7861**.

1 (3) The committee determines that the creation and sale of the artwork will act
2 to increase public awareness and support for the salmon stamp program and the
3 restoration of salmon and their habitats in the state.

4 (4) Any other conditions deemed necessary by the committee for determining
5 whether to recommend approval to the director have been met.

6 (c) The director, upon receiving the recommendation of the committee, and
7 upon finding that there will be no new costs to the department, may authorize the
8 recommended entity to create or contract to create salmon or salmon fishing
9 artwork and other materials based on that artwork, including, but not limited to, a
10 stamp, and offer those items for sale to the public, for the purpose described in
11 subdivision (a).

12 (d) No person or entity, including, but not limited to, any nonprofit organization,
13 may use the name of the Commercial Salmon Stamp, the Commercial Salmon
14 Trollers Advisory Committee, or the Commercial Salmon Trollers Enhancement
15 and Restoration Program for the sale of artwork and other materials, unless that
16 person or entity has been approved by the director under this section for that
17 purpose. The approval of the director under this section shall be for one year, after
18 which the approval may be renewed for an additional year, upon recommendation
19 of the committee.

20 (e) No artwork sold in the form of a stamp under this section conveys to the
21 purchaser any entitlement to engage in the commercial salmon fishery.

22 (f) Proceeds from the sales of artwork and other materials sold under this
23 section, after deduction of all reasonable costs borne by the nonprofit organization
24 or California Salmon Council for creation of the artwork and conducting the sales,
25 shall be deposited in the Commercial Salmon Stamp Dedicated Subaccount.

26 **Comment.** Section 27785 continues former Fish and Game Code Section 7862.5 without
27 substantive change.

28 **§ 27790. Inoperative date of chapter**

29 27790. This chapter shall remain in effect only until January 1, 2019, and as of
30 that date is repealed, unless a later enacted statute that is enacted before January 1,
31 2019, deletes or extends that date.

32 **Comment.** Section 27790 continues former Fish and Game Code Section 7863 without
33 substantive change.

34 **CHAPTER 3. PERMISSIONS AND PROHIBITIONS**

35 **§ 27850. Authorized take**

36 27850. (a) Except as modified by the director pursuant to **Section 7652**, salmon
37 may be taken under authority of a commercial fishing license and a commercial
38 fishing salmon stamp only in **Districts 6, 7, 10, 11, 16, 17, 18, and 19**.

39 (b) All species of salmon, except silver salmon, may be taken only between
40 April 15 and September 30. Silver salmon may be taken only between May 15 and

1 September 30.

2 (c) No king salmon may be possessed that is less than 26 inches in length and no
3 silver salmon may be possessed that is less than 22 inches. The length of salmon is
4 to be measured from the tip of the snout to the extreme tip of the tail without
5 resorting to any force other than swinging or fanning the tail.

6 (d) Salmon may be taken for commercial purposes only by hook and line, and
7 there is no bag limit.

8 **Comment.** Section 27850 continues former Fish and Game Code Section 8210.2 without
9 substantive change.

10 **§ 27855. Possession, sale, offer for sale, or purchase**

11 27855. Salmon may be possessed, sold, offered for sale, or purchased only under
12 one of the following conditions:

13 (a) If taken legally in another state that permits the sale of salmon, and lawfully
14 imported consistent with **Section 2361**.

15 (b) If taken in compliance with this chapter.

16 **Comment.** Section 27855 combines and restates former Fish and Game Code Section 8217,
17 and the part of Section 8371(c)-(d) applicable to salmon, without substantive change.

18 **Staff Note.** Proposed Section 27855 is intended to combine and restate existing Fish and
19 Game Code Section 8217, and the part of Section 8371(c)-(d) applicable to salmon, to improve
20 the clarity of those provisions without changing their substantive effect. The existing provisions
21 read as follows:

22 “8217. Salmon may be sold subject to the exceptions and restrictions contained in this article.

23 8371. Striped bass and salmon may be sold or offered for sale only under the following
24 conditions:

25 (a) If the striped bass is taken or possessed by, and is the cultured progeny of, an aquaculturist
26 who is registered under Section 15101, that striped bass may be sold or purchased subject to
27 regulations of the commission.

28 (b) If the striped bass is taken legally in another state that permits the sale of that fish and if the
29 fish is lawfully imported under Section 2363, the striped bass may be possessed, sold, or
30 purchased.

31 (c) If the salmon is taken legally in another state that permits the sale of salmon, and is lawfully
32 imported consistent with Section 2361, the salmon may be possessed, sold, or purchased.

33 (d) If the salmon is taken in accordance with Article 4 (commencing with Section 8210.2), the
34 salmon may be possessed, sold, or purchased.”

35 **The staff invites comment on whether the proposed combining and restatement would**
36 **cause any substantive change in the meaning of the provisions.**

37 **§ 27860. Sale during period when take unlawful**

38 27860. During the period when salmon may not be taken for commercial
39 purposes in a district, salmon may be sold in that district only under the
40 regulations of the commission.

41 **Comment.** Section 27860 continues former Fish and Game Code Section 8213 without
42 substantive change.

1 **§ 27865. Take at mouth of Humboldt Bay**

2 27865. It is unlawful to take salmon for commercial purposes at the mouth of
3 Humboldt Bay in those portions of **Districts 6 and 7** within three nautical miles
4 north and south of a line drawn due west for three nautical miles from the center of
5 the mouth of that bay.

6 **Comment.** Section 27865 continues former Fish and Game Code Section 8214 without
7 substantive change.

8 **§ 27870. Sale, possession, or transport of silver salmon in specified districts**

9 27870. Silver salmon may not be sold or possessed in, or transported through,
10 **District 6, 7, 10, 11, 16, 17, or 18**, during the time when the taking of silver
11 salmon for commercial purposes is unlawful in those districts.

12 **Comment.** Section 27870 continues former Fish and Game Code Section 8215 without
13 substantive change.

14 **§ 27875. Undersized salmon**

15 27875. It is unlawful to gaff, club, otherwise injure, or possess any king or silver
16 salmon under the legal size.

17 **Comment.** Section 27875 continues former Fish and Game Code Section 8218 without
18 change.

19 **§ 27880. Take for commercial purpose in District 6 or 7**

20 27880. Salmon may not be taken for commercial purposes in **District 6** at the
21 mouths of the Smith and Klamath Rivers within three nautical miles north and
22 south of a line drawn due west for three nautical miles from the center of the
23 mouth of each of those streams, or during the months of August and September in
24 **District 7** at the mouth of the Eel River within two nautical miles north and south
25 of a line drawn due west for two nautical miles from the center of the mouth of
26 that stream.

27 **Comment.** Section 27880 continues former Fish and Game Code Section 8219 without
28 substantive change.

29 **§ 27885. Take with purse or round haul net**

30 27885. Salmon may not be taken with a purse or round haul net.

31 **Comment.** Section 27885 continues the part of former Fish and Game Code Section 8756
32 applicable to salmon without substantive change.

33 **§ 27890. Use of net in waters upstream from Carquinez Bridge**

34 27890. (a) It is unlawful for any person to use, operate, or assist in using or
35 operating any net to take salmon for a commercial purpose in any tidal waters
36 lying upstream from the Carquinez Bridge, or to possess a net on a boat in those
37 waters that is unlawful to use in those waters.

38 (b) The punishment for a first violation of this section is a fine of not more than
39 two thousand dollars (\$2,000), imprisonment in a county jail for not more than one

1 year, or both that fine and imprisonment.

2 (c) A second or subsequent violation of this section is punishable by a fine of
3 not less than two thousand dollars (\$2,000) nor more than four thousand dollars
4 (\$4,000), or imprisonment in the county jail for one year, or both that fine and
5 imprisonment.

6 **Comment.** Subdivision (a) of Section 27890 continues the part of former Fish and Game Code
7 Section 8670 applicable to salmon without substantive change.

8 Subdivision (b) continues former Fish and Game Code Section 12002(b)(5) without
9 substantive change.

10 Subdivision (c) continues former Fish and Game Code Section 12003 without substantive
11 change.

12 **§ 27895. Use of trawl net**

13 27895. (a) Except as provided in subdivision (b), it is unlawful for any person to
14 possess salmon on board, or to land salmon from, a vessel on which exists any
15 type of trawl net.

16 (b) Salmon taken incidentally with other species with a trawl net may be
17 possessed and landed if authorized to be taken incidentally pursuant to Section
18 663.10 of Part 663 of Title 50 of the Code of Federal Regulations, pursuant to a
19 permit issued by the commission under **Section 8606**, or pursuant to both.

20 **Comment.** Section 27895 continues former Fish and Game Code Section 8834.1 without
21 substantive change.

22 **§ 27900. Required return to water if caught in net**

23 27900. (a) Any salmon that is taken in any type of net shall, regardless of its
24 condition, be immediately freed and removed from the net by the fisherman, and
25 immediately returned to the water without further harm.

26 (b) A commercial fisherman shall not have any salmon, whether dead or alive,
27 in his or her possession, at any time when conducting netting operations or when
28 going to or from those operations, except when releasing a salmon from a net.

29 (c) The return of salmon to the water pursuant to this section is not deterioration,
30 waste, or spoilage of fish for purposes of **Section 7704**.

31 **Comment.** Section 27900 continues the part of former Fish and Game Code Section 8370
32 applicable to salmon without substantive change.

33 **§ 27905. Revocation or suspension of license**

34 27905. (d) Notwithstanding **Sections 12000, 12001, and 12002**, the commercial
35 fishing license of the master of a vessel may be revoked or suspended by the
36 commission, when requested by the department, for a period not to exceed one
37 year, upon the second conviction in three years of the master or the master's agent,
38 servant, employee, or any other person acting under the master's direction or
39 control, for a violation of any provision of this chapter.

40 (b) A master's license shall not be revoked unless both the first and second
41 convictions are for a violation by the master or a violation occurring when the

1 person convicted was acting as the master’s agent, servant, employee, or acting
2 under the master’s direction or control.

3 (c) The master of a vessel is the person on board the vessel who is in charge of
4 the vessel.

5 **Comment.** Section 27905 continues the part of former Fish and Game Code Section
6 12022.8(d)-(f) applicable to the provisions of this chapter, without substantive change.

7 CHAPTER 4. HIGH SEAS INTERCEPTION OF SALMON

8 § 28000. Definitions

9 28000. The definitions in this section govern the construction of this chapter:

10 (a) “Environmental purpose” means the intent to prevent or minimize adverse
11 ecological effects to water quality.

12 (b) “High seas interception” means the unauthorized taking of salmon for
13 commercial purposes outside the United States 200-mile fishery conservation
14 zone.

15 (c) “Humanitarian purpose” means the intent to provide medical services for a
16 sick or injured person, or to prevent the loss of human life.

17 (d) “Process” means affecting the condition or location of salmon, including
18 preparation, packaging, storage, refrigeration, or transportation.

19 (e) “Unauthorized” means contrary to a statute or regulation of the United States
20 or this state or to a treaty or international fishery agreement, or in violation of a
21 foreign law.

22 (f) “Written instrument” means hand written or printed matter, including
23 vessels’ logs and papers, bills of lading and sale, documents relating to processing,
24 shipping, and customs, and information stamped on or affixed to cans, crates,
25 containers, freight, or other means of storage or packaging.

26 **Comment.** Section 28000 continues former Fish and Game Code Section 8120 without
27 substantive change.

28 § 28005. Prohibited acts generally

29 28005. It is unlawful for any person to do any of the following:

30 (a) Buy, sell, trade, process, or possess salmon, or attempt to buy, sell, trade,
31 process, or possess salmon, with the knowledge that the salmon has been, or will
32 be, obtained by high seas interception.

33 (b) Knowingly provide financing, premises, equipment, supplies, services,
34 power, or fuel used to buy, sell, trade, process, or possess salmon that has been, or
35 will be, obtained by high seas interception.

36 (c) Act as a broker or middleman, or otherwise act on behalf of another person,
37 to arrange for or negotiate, or attempt to arrange for or negotiate, the purchase,
38 sale, trade, processing, or possession of salmon, with the knowledge that the
39 salmon has been, or will be, obtained by high seas interception.

40 (d) Create, circulate, or possess any written instrument related to salmon with

1 the knowledge that the written instrument conveys misleading or untrue
2 information about the ownership, possession, processing, origin, destination, route
3 of shipping, type, or condition of salmon, or the time, place, and manner of the
4 taking of the salmon.

5 **Comment.** Subdivisions (a) through (c) of Section 28005 continue former Fish and Game
6 Code Section 8121 without substantive change.

7 Subdivision (d) continues former Fish and Game Code Section 8122 without change.

8 **§ 28010. Prohibited acts on vessel known to contain unlawfully obtained salmon**

9 28010. (a) It is unlawful for a person who knows that a vessel contains salmon
10 obtained by high seas interception, or that the owner or operator of the vessel
11 intends to engage in the high seas interception of salmon, to do any of the
12 following:

13 (1) Move persons, cargo, or other property to or from the vessel.

14 (2) Service or repair the vessel or its equipment.

15 (3) Provide the vessel with power, supplies, equipment, or fuel.

16 (4) Provide the vessel with information, other than weather reports, capable of
17 aiding the high seas interception of salmon or frustrating or avoiding detection,
18 including communicating the movements, intentions, or activities of state or
19 federal law enforcement officials or other fishing vessels.

20 (5) Permit the vessel to dock or anchor, or to remain docked or anchored, if that
21 person is responsible for the operation of the facility, harbor, or anchorage.

22 (b) This section does not prohibit any person from performing any act or acts set
23 forth in subdivision (a) if that person reasonably believes that the act or acts were
24 necessary for humanitarian or environmental purposes or to prevent a significant
25 loss of property, if that person provides immediate notice, by the quickest
26 available means, to the United States Coast Guard, the department, or any law
27 enforcement agency, as to the type of assistance provided and the circumstances
28 involved.

29 **Comment.** Section 28010 continues former Fish and Game Code Section 8123 without
30 substantive change.

31 **CHAPTER 5. COMMERCIAL SALMON VESSEL PERMITS**

32 **Article 1. General Provisions**

33 **§ 28050. Legislative declaration**

34 28050. (a) The Legislature finds and declares that commercial salmon fishing is
35 in the public interest and that the preservation of commercial salmon fishing
36 directly affects the health and welfare of the public. The Legislature further finds
37 and declares that, due to past declines in salmon stocks, the increase in the quality
38 and value of salmon on the market, the number and types of vessels being used,
39 the commensurate salmon fishing potential of the commercial salmon fishing fleet,

1 and the demand for entry into the commercial salmon fishery, it is necessary and
2 proper to limit the persons who are eligible to take salmon for commercial
3 purposes and to regulate the amount of salmon that may be taken by restricting the
4 number and salmon fishing potential of the vessels in the commercial salmon
5 fishing fleet in order to preserve and rebuild the salmon resource, to protect
6 commercial salmon fishing, and thereby to protect the health and welfare of the
7 public.

8 (b) The Legislature further finds and declares the following:

9 (1) The salmon resource declined in 1983 and 1984 as a result of the most
10 severe warm water El Nino current of this century, which caused major
11 disruptions and hardship in the commercial salmon fishery. Habitat destruction in
12 the rivers of California has also depleted the salmon stocks which are bred and
13 reared in those rivers.

14 (2) The Pacific Fishery Management Council has imposed season closures on
15 the taking of salmon since 1982, including a total prohibition on commercial
16 taking of salmon in 1985 along portions of the northern California coast to protect
17 the king salmon stock from the Klamath River. In 1987, a five-year agreement was
18 signed which allocates the king salmon stock from the Klamath River between
19 ocean commercial and recreational users and in-river Indian and recreational
20 users. This agreement may result in further closures.

21 (3) Nearly 30 percent of the commercial salmon fishing vessels which were
22 permitted to take salmon for commercial purposes in California did not record
23 landings of salmon in the 1986 and 1987 commercial salmon seasons.

24 (4) There are more than enough commercial salmon fishing vessels for which
25 commercial salmon fishing permits have been issued to harvest the less than 10
26 million pounds of salmon that are currently available annually. With the present
27 fleet makeup between large vessels and small vessels and between full-time and
28 part-time fishermen, it is estimated that the present resource capacity may
29 accommodate a fleet of not more than 2,500 permitted vessels. Therefore, no new
30 permits should be issued until the time that the fleet size falls below 2,500
31 permitted vessels. Adequate provision for entry of new persons or vessels to the
32 commercial salmon fishery is afforded by transfers of vessels for which permits
33 have been issued and renewed and by transfers of those existing permits to vessels
34 of the same or less salmon fishing potential.

35 **Comment.** Section 28050 continues former Fish and Game Code Section 8230 without
36 change.

37 **§ 28055. Severability of provisions**

38 28055. If any provision of this chapter, or the application of those provisions, to
39 any person or circumstance, is held invalid, that invalidity shall not affect other
40 provisions or applications of the chapter that can be given effect without the
41 invalid provision or application, and to this end the provisions of those chapters
42 are severable.

1 **Comment.** Section 28055 continues former Fish and Game Code Section 8248 without
2 substantive change.

3 **§ 28060. Regulation and administrative procedures**

4 28060. (a) The commission and the department may make and enforce
5 regulations that may be necessary or convenient for carrying out any power,
6 authority, or jurisdiction delegated to it under this chapter.

7 (b) The department, in cooperation with the commercial salmon fishing review
8 board, shall establish and implement administrative procedures for the
9 administration of this chapter.

10 **Comment.** Subdivision (a) of Section 28060 continues former Fish and Game Code Section
11 8246.8 without substantive change.

12 Subdivision (b) continues former Fish and Game Code Section 8239.2 without substantive
13 change.

14 **§ 28065. Commercial take or possession on vessel**

15 28065. It is unlawful to take or possess salmon for a commercial purpose on a
16 vessel unless all of the following conditions are met:

17 (a) The vessel is registered with the department pursuant to **Section 7881**, and
18 the owner of the vessel has a valid commercial salmon vessel permit for the use of
19 that vessel.

20 (b) The permit for the use of the vessel is affixed to the vessel adjacent to the
21 department registration number unless otherwise authorized by the department.

22 (c) The permit affixed to the vessel is visible at all times.

23 **Comment.** Section 28065 continues former Fish and Game Code Section 8232 without
24 substantive change.

25 **§ 28070. Take for sport purposes**

26 28070. (a) Except as provided in this section, it is unlawful to take salmon for
27 sport purposes on a permitted vessel.

28 (b) Subdivision (a) does not prohibit taking salmon for sport purposes under a
29 sportfishing or a sport ocean fishing license, which is issued pursuant to **Article 3**
30 **(commencing with Section 7145) of Chapter 1**, on a vessel licensed as a
31 commercial passenger fishing boat pursuant to **Section 7920** and engaged in that
32 business on any day when salmon are not being taken for commercial purposes on
33 that vessel.

34 (c) Subdivision (a) does not prohibit taking salmon for sport purposes under a
35 sportfishing or a sport ocean fishing license, which is issued pursuant to **Article 3**
36 **(commencing with Section 7145) of Chapter 1**, on a permitted vessel in the
37 Klamath Management Zone, as designated by the federal Pacific Fisheries
38 Management Council, when the commercial salmon season is closed and more
39 than 24 hours after the time when salmon taken during the commercial salmon
40 season are required to be landed.

1 (d) The use of a vessel pursuant to subdivision (c) shall be considered as being
2 engaged or employed exclusively in the taking and possession of fish or other
3 living resource of the sea for commercial purposes for purposes of subdivision (a)
4 of Section 227 of the Revenue and Taxation Code

5 **Comment.** Section 28070 continues former Fish and Game Code Section 8232.5 without
6 substantive change.

7 **§ 28075. Conditions for issuance of any permit**

8 28075. The department shall not issue a permit under this chapter unless one of
9 the following first occurs:

10 (a) The applicant presents to the department a commercial fishing salmon stamp
11 issued to the owner or an agent of the owner. No commercial fishing salmon
12 stamp shall be presented or accepted by the department to authorize issuance of a
13 permit under this section for more than one vessel.

14 (b) The applicant obtains a commercial fishing salmon stamp and pays the fees
15 for the stamp.

16 (c) On or before April 1 of the current license year, the owner is 70 years of age.

17 **Comment.** Section 28075 continues former Fish and Game Code Section 8234(a) without
18 substantive change.

19 **§ 28080. Inapplicability of limited fishery eligibility provision**

20 28080. **Section 8101** does not apply to this chapter.

21 **Comment.** Section 28080 continues former Fish and Game Code Section 8233.9 without
22 substantive change.

23 **§ 28085. Allowable number of permitted vessels**

24 28085. (a) If the department determines that the number of permitted vessels is
25 less than 2,500, the department shall determine, after consultation with the review
26 board, the number and vessel classification for which any new, original permits
27 may be issued to bring the total number of permitted vessels to no more than
28 2,500.

29 (b) New, original permits to be issued shall be authorized by vessel
30 classifications established under **Section 8238**.

31 **Comment.** Section 28085 continues former Fish and Game Code Section 8243 without
32 substantive change.

33 **§ 28090. New entry permit**

34 28090. A person seeking to gain entry into the commercial salmon fishery may
35 obtain a permit under either of the following conditions:

36 (a) By legally obtaining the ownership of a permitted vessel and notifying the
37 department of the change of ownership of the permitted vessel.

38 (b) By applying to obtain a new, original permit issued by the department
39 pursuant to **Sections 8244 and 8245**.

1 **Comment.** Section 28090 continues former Fish and Game Code Section 8242 without
2 substantive change.

3 **§ 28095. Application for new entry permit**

4 28095. (a) An applicant may apply for a new, original permit as an individual, a
5 joint venture, or a corporation. The applicant may submit only one application
6 annually. The application shall be made on a form provided by the department.

7 (b) An applicant for a new, original permit under this section shall submit a
8 completed application as directed by the department. The completed application,
9 and the application fees prescribed in subdivision (c), shall be delivered or
10 postmarked on or before February 1 in order to be considered for permits for the
11 subsequent permit year.

12 (c) The applicant shall submit with the application a nonrefundable application
13 fee determined by the department in an amount sufficient to pay the costs of
14 administering the issuance of new, original permits by the department, which shall
15 be not less than thirty-five dollars (\$35).

16 (d) The department, after consultation with the review board, shall determine the
17 fishing potential of the vessel for use of which the new, original permit is to be
18 issued and otherwise determine if the applicant is eligible to be issued a permit
19 under this chapter.

20 **Comment.** Section 28095 continues former Fish and Game Code Section 8244 without
21 substantive change.

22 **§ 28100. Drawing for new entry permits**

23 28100. (a) The department shall conduct a drawing from the applicants
24 determined to be eligible for new, original permits pursuant to **Section 8244** on the
25 first Friday in March of each year that new, original permits are authorized to be
26 issued pursuant to **Section 8243**.

27 (b) The department shall issue a permit to each of those applicants who are
28 drawn upon payment of the fees prescribed in subdivision (c) for the permit and,
29 except as provided in subdivision (e), submittal of sufficient information to
30 establish that the applicant is the owner of a vessel within the vessel classification
31 designated in the application.

32 (c) The amount of the fees for a permit issued under this section are the same as
33 the amount of the fees for renewal of a permit for the subsequent license year
34 beginning on April 1 which are established pursuant to **subdivision (b) of Section**
35 **8235**. A successful applicant shall pay the fees for the permit on or before March
36 31. The department shall deposit the fees to the fund pursuant to **Section 13001**.

37 (d) Except as provided in subdivision (e), a successful applicant shall submit
38 proof of ownership of the vessel to be used under the permit within 90 days of the
39 drawing.

1 (e) A successful applicant may request one extension of no more than 90 days to
2 obtain a vessel as designated in the application. The department, after consultation
3 with the review board, may grant that extension.

4 (f) If any successful applicant does not establish that he or she is the owner of a
5 vessel as designated in the application and affix the new permit on that vessel or
6 on another vessel with the same or less fishing potential, as determined by the
7 department after consultation with the board, within 90 days or by the end of a 90
8 day extension granted by the department, the new permit is null and void.

9 (g) The department or the review board is not liable for any risk of failure by the
10 applicant to obtain a vessel which is designated in an application or to complete
11 the process for determination of the fishing potential of another vessel, or for
12 failure by the applicant to obtain that other vessel, in the time prescribed in this
13 section.

14 **Comment.** Section 28100 continues former Fish and Game Code Section 8245 without
15 substantive change.

16 **§ 28105. Review of new entry provisions**

17 28105. The review board shall review the effectiveness of new entry provisions
18 every three years beginning three years following the first permit drawing and
19 make recommendations to the department for any changes it finds to be needed in
20 the new entry system.

21 **Comment.** Section 28105 continues former Fish and Game Code Section 8245.5 without
22 change.

23 **§ 28110. Issuance of new entry permit**

24 28110. Except as otherwise provided in this chapter, the department shall issue a
25 permit to the owner of a commercial salmon fishing vessel that is registered with
26 the department pursuant to **Section 7881** for the new entry of that vessel into the
27 commercial salmon fishery, if that owner is authorized to be issued a permit for
28 the use of that new entry vessel pursuant to **subdivision (b) of Section 8245**.

29 **Comment.** Section 28110 continues former Fish and Game Code Section 8233.8 without
30 substantive change.

31 **§ 28115. Renewal required prior to expiration**

32 28115. Except as otherwise provided in this chapter, a permit shall be renewed
33 prior to expiration.

34 **Comment.** Section 28115 continues the first sentence of former Fish and Game Code Section
35 8233 without substantive change.

36 **§ 28120. Department to send renewal notice and application**

37 28120. (a) The department shall send a written notice of renewal and a permit
38 renewal application to the owner of each currently permitted vessel at the most
39 recent address of that owner in the records of the department. The notice shall be
40 sent by first-class mail before March 1. The department shall mail a copy of the

1 notice for renewal to all associations and groups known to the department to be
2 representing commercial salmon fishermen. The department shall also provide
3 blank permit renewal applications at appropriate offices of the department.

4 (b) The notice shall include all of the following:

5 (1) Instructions on how to apply for renewal of a permit.

6 (2) Information on the provisions of **subdivisions (c) and (e) of Section 8235**.

7 (c) Failure to receive the notice under this section does not exempt or excuse the
8 owner from the requirement of annual renewal of the permit on or before the
9 permit expiration date.

10 **Comment.** Section 28120 continues former Fish and Game Code Section 8236 without
11 substantive change.

12 **§ 28125. Renewal of permit**

13 28125. (a) The owner of a permitted vessel, or that owner's agent, may apply for
14 renewal of the permit annually on or before April 30, upon payment of the fees
15 established under subdivision (b), without penalty. Upon receipt of the application
16 and fees, the department shall issue the permit for use of the permitted vessel in
17 the subsequent permit year only to the owner of the permitted vessel.

18 (b) The department shall fix the annual fee for the renewal of the permit in an
19 amount it determines to be necessary to pay the reasonable costs of implementing
20 and administering this chapter.

21 (c) If an owner to whom a permit has been issued, or that owner's agent, applies
22 for renewal of the permit, the application for renewal shall be received or, if
23 mailed, postmarked, on or before April 30. An application received or, if mailed,
24 postmarked, after April 30 shall be assessed a late fee subject to **Section 7852.2**.
25 The department shall issue the permit for use of the permitted vessel in the
26 subsequent permit year.

27 (d) The department shall suspend a late fee otherwise due under subdivision (c)
28 and shall issue a permit for use of the permitted vessel in the subsequent permit
29 year if the department is unable to accept applications for renewal of permits by
30 March 1.

31 (e) Except as provided in subdivision (c), the department shall not renew a
32 permit for which the application for renewal is not received, or, if mailed, is
33 received or postmarked after expiration of the permit.

34 **Comment.** Section 28125 continues former Fish and Game Code Section 8235 without
35 substantive change.

36 **§ 28130. Issuance of permit after renewal**

37 28130. Except as otherwise provided in this chapter, the department shall issue a
38 permit, upon application and payment of the renewal fees pursuant to **Section**
39 **8235**, that is valid for the subsequent permit year, to the owner of a permitted
40 vessel that is registered with the department pursuant to **Section 7881**.

1 **Comment.** Section 28130 continues former Fish and Game Code Section 8233.3 without
2 substantive change.

3 **§ 28135. Change of ownership of vessel**

4 28135. (a) Except as otherwise provided in this chapter, the department shall
5 change the designation of the holder of a permit to the new owner of a permitted
6 vessel upon receipt of a notice of change of ownership of the permitted vessel,
7 whether the change of ownership is by contract, by operation of law, or otherwise.

8 (b) The permit shall not be transferred to any other vessel, except by the
9 issuance of a permit for use of the replacement vessel pursuant to subdivision (c)
10 and **Sections 8239 to 8241, inclusive.**

11 (c) The owner of the permitted vessel may seek to retire the permitted vessel
12 from the commercial salmon fishery and apply for transfer of the permit, to be
13 issued pursuant to **Section 8241**, for use of a replacement vessel.

14 (d) A permit changed pursuant to this section is valid for the permit year during
15 which it is issued.

16 (e) Upon change of the designation of the holder of the permit, all rights,
17 privileges, and obligations of a permit holder, including rights of renewal, are
18 transferred to the new owner of the permitted vessel.

19 **Comment.** Section 28135 combines and restates former Fish and Game Code Sections 8233.5
20 and 8237 without substantive change.

21 **Staff Note.** Proposed Section 28135 is intended to combine and restate existing Fish and
22 Game Code Sections 8233.5 and 8237 to improve their clarity, without changing their substantive
23 effect. The existing provisions read as follows:

24 “8233.5. Except as otherwise provided in this article, the department shall change the
25 designation of the holder of a permit, and with it shall go all rights, privileges, and obligations of
26 a permit holder, including rights of renewal, upon receipt of a notice of change of ownership to a
27 new owner of a permitted vessel upon change of ownership in the permitted vessel. A permit
28 changed pursuant to this section is valid for the permit year during which it is issued.

29 8237. (a) The department shall change the designation of the holder of a permit to the new
30 owner of a permitted vessel upon change of ownership of the permitted vessel, whether the
31 change of ownership is by contract, by operation of law, or otherwise.

32 (b) The permit shall not be transferred to any other vessel, except by the issuance of a permit
33 for use of the replacement vessel pursuant to subdivision (c) and Sections 8239 to 8241,
34 inclusive.

35 (c) The owner of the permitted vessel may seek to retire the permitted vessel from the
36 commercial salmon fishery and apply for transfer of the permit, to be issued pursuant to Section
37 8241, for use of a replacement vessel.”

38 **The staff invites comment on whether the proposed combining and restatement would
39 cause any substantive change in the meaning of the provisions.**

40 **§ 28140. Replacement vessel permit**

41 28140. A transfer may be approved and a permit issued for use of a replacement
42 vessel pursuant to **Section 8241** under all of the following conditions:

1 (a) The vessel owner submits a written request for the transfer to the department
2 on a form provided by the department and pays a nonrefundable transfer fee of
3 two hundred dollars (\$200).

4 (b) The permit for the permitted vessel is current, and the owner of the permitted
5 vessel makes assurances in the application that any renewal of the permit which
6 becomes due during the application processing period will be made.

7 (c) The owner of the permitted vessel submits evidence with the application
8 sufficient to establish that he or she is the owner of the permitted vessel at the time
9 of the application for the transfer.

10 (d) The vessel owner submits evidence with the application sufficient, in the
11 judgment of the review board and the department, to establish that the replacement
12 vessel has the same fishing potential as, or less fishing potential than, the
13 permitted vessel.

14 (e) Under penalty of perjury, the vessel owner signs the application for transfer
15 and certifies that the included information is true to the best of his or her
16 information and belief.

17 (f) The same transfer has not been requested within the previous 12 months or
18 the same transfer has not previously been denied and that denial is final, unless the
19 application or supporting information are different than that contained in the
20 previous application, as determined by the department and after consultation with
21 the review board.

22 (g) The permittee has 50 percent or greater ownership interest in the permitted
23 vessel and in the replacement vessel. For purposes of this subdivision and
24 subdivision (h), “permittee” means an individual designated as the owner of the
25 permitted vessel.

26 (h) Except as provided in **Section 8239.1 or paragraph (5) of subdivision (a)**
27 **of Section 8246.7**, the permittee has maintained a 50 percent or greater ownership
28 interest in the permitted vessel for not less than 18 months prior to the date of the
29 transfer and the permit for use of the permitted vessel has been maintained for that
30 vessel and has not been previously transferred less than 18 months prior to the date
31 of the transfer.

32 (i) The permittee has written authority from the legal owner, if other than the
33 permittee or mortgager, if any, to transfer the vessel permit from the permitted
34 vessel.

35 (j) The department determines, after consultation with the review board, the
36 following:

37 (1) The replacement vessel has the same fishing potential as, or less fishing
38 potential than, the permitted vessel. The review board and the department shall
39 consider the type of fishery the vessel was previously used in and the vessel’s
40 highest and best use by a prudent operator, and the review board shall make
41 written findings on those facts.

1 (2) The replacement vessel's fishing potential will not substantially increase
2 fishing capacity over that which resulted from the operation of the permitted
3 vessel.

4 (3) The applicant owns the replacement vessel.

5 (4) The conditions in this chapter are satisfied.

6 **Comment.** Subdivisions (a) through (i) of Section 28140 continue former Fish and Game Code
7 Section 8239 without substantive change.

8 Subdivision (j) continues former Fish and Game Code Section 8241 without substantive
9 change.

10 **§ 28145. Fishing potential classification system for replacement vessels**

11 28145. (a) The department, in consultation with the review board, shall establish
12 and adopt, in the manner prescribed in **Section 8238.3**, a vessel classification
13 system to determine the fishing potential of replacement vessels for applications
14 for transferred permits to be issued pursuant to **Section 8241**, including
15 consideration of how the vessel from which the permit is sought to be transferred
16 was used, the vessel's highest and best use by a prudent operator, and the fishing
17 potential of prospective vessels for applications for new, original permits.

18 (b) The vessel classification system shall be used by the department in
19 consultation with the review board for issuance of new original vessel permits
20 pursuant to **Section 8243** and as a guideline for the review board in making its
21 recommendations to the department on vessel permit transfers.

22 **Comment.** Subdivision (a) of Section 28145 continues former Fish and Game Code Section
23 8238 without substantive change.

24 Subdivision (b) continues former Fish and Game Code Section 8238.1 without substantive
25 change.

26 **§ 28150. Request for review of vessel before submission of transfer application**

27 28150. Notwithstanding **Section 8239, 8239.1, or 8239.2**, any person may
28 request the review board to determine the fishing potential of any permitted vessel
29 or any replacement vessel before a transfer application for a permit for use of a
30 replacement vessel is submitted to the department. The person making a request
31 under this subdivision is not required to be the owner of either vessel. A
32 determination under this subdivision is not binding on the review board or the
33 department and is only advisory.

34 **Comment.** Section 28150 continues former Fish and Game Code Section 8239.9 without
35 substantive change.

36 **§ 28155. Transfer application based on lost, stolen, or destroyed vessel**

37 28155. (a) Unless otherwise prohibited, the department shall accept a transfer
38 application within one year after the date that a permitted vessel was lost, stolen,
39 or destroyed, notwithstanding any inability to physically examine the permitted
40 vessel to determine its salmon fishing potential. Only the permittee at the time of
41 the loss, theft, or destruction of the vessel may apply for the transfer of the vessel

1 permit. Proof that a vessel is lost, stolen, or destroyed shall be in the form of a
2 copy of the report filed with the United States Coast Guard or any other law
3 enforcement agency or fire department investigating the loss.

4 (b) The owner, or the owner's agent, may request an extension of the time to
5 complete a transfer under subdivision (a) if the application for extension is
6 submitted before the end of the time to submit an application under subdivision
7 (a), or before the end of any previous extensions granted under this subdivision,
8 whichever date is later.

9 (c) The department, after consultation with the review board and for good cause
10 shown, including, but not limited to, inability to find a replacement vessel or
11 pending litigation, may grant an extension of the time to complete a transfer under
12 subdivision (a) for a period of six months. The department may grant further
13 extensions under this subdivision, not to exceed a total time period of five years
14 after the date the permitted vessel was lost, stolen, or destroyed if the permit fees
15 are paid annually as required in paragraph (2) of subdivision (b) of Section 8239
16 and subdivision (c) of Section 8240.

17 (d) Notwithstanding any other provision of this section, the department shall not
18 issue a permit for use of a replacement vessel if any of the following
19 circumstances exist:

20 (1) The permitted vessel was reported as lost, stolen, or destroyed by fraudulent
21 means, or for fraudulent purposes.

22 (2) The permit application contains or is accompanied with fraudulent or
23 willfully misleading information.

24 (3) The permit for the permitted vessel expires and is not renewed. Except as
25 provided in **Section 8235**, an owner of a permitted vessel shall renew the permit
26 before the expiration date even if that owner has a transfer application pending.

27 (e) The department may refuse to issue a permit for use of a replacement vessel,
28 or issue a permit to a new owner of a permitted vessel, on any grounds for which a
29 permit may be suspended or revoked.

30 **Comment.** Subdivisions (a) through (c) of Section 28155 continue former Fish and Game
31 Code Section 8239.1 without substantive change.

32 Subdivisions (d) and (e) continue former Fish and Game Code Section 8240 without
33 substantive change.

34 **§ 28160. Issuance of replacement vessel permit**

35 28160. Except as otherwise provided in this chapter, the department shall issue a
36 permit, upon payment of the transfer fees pursuant to **subdivision (a) of Section**
37 **8239** and surrender to the department of the permit for the use of the permitted
38 vessel, to the owner of a replacement vessel that is registered with the department
39 pursuant to **Section 7881**, if the transfer has been approved pursuant to **Section**
40 **8241**.

41 **Comment.** Section 28160 continues former Fish and Game Code Section 8233.4 without
42 substantive change.

1 **§ 28165. Term of permit for replacement vehicle**

2 28165. A permit issued for the use of a replacement vessel under **Section 8241**
3 is valid for the balance of the permit year for which the permit for the use of the
4 permitted vessel was originally issued or last renewed, and the permit issued under
5 this section authorizes the use of the replacement vessel only for that period.

6 **Comment.** Section 28165 continues former Fish and Game Code Section 8239.6 without
7 substantive change.

8 **§ 28170. Revocation of permit based on fraud**

9 28170. The commission, after notice and opportunity for hearing and
10 consultation with the review board, shall revoke a commercial salmon vessel
11 permit issued pursuant to this chapter if the vessel permit was obtained by
12 fraudulent means.

13 **Comment.** Section 28170 continues former Fish and Game Code Section 8246.4 without
14 substantive change.

15 **§ 28175. Appeal of revocation or denial or permit transfer**

16 28175. A person whose commercial salmon fishing vessel permit is revoked by
17 the commission or who has been denied a permit transfer may appeal the
18 revocation or denial to the commission by submitting the appeal in writing to the
19 commission within 60 days of the decision.

20 **Comment.** Section 28175 continues former Fish and Game Code Section 8246.6 without
21 change.

22 **§ 28180. Reversal of revocation order or denial of permit renewal or transfer**

23 28180. (a) The commission shall reverse an order of revocation, order the permit
24 renewed, or order the approval of a permit transfer only if it finds one of the
25 following grounds:

26 (1) The permittee failed to submit an application and pay the fees for renewal on
27 or before April 30 pursuant to **Section 8235** and the failure to renew a permit until
28 after the expiration date was due to death, physical illness, mental incapacity, or
29 being called to active military duty, and the person was not reasonably able to
30 have an agent renew the permit.

31 (2) A lienholder of a permitted vessel, if the vessel is the property of the
32 lienholder as a result of foreclosure, surrender, or litigation, can show loss due to
33 the nonrenewal of a permit by the permittee, and the nonrenewal occurred without
34 the knowledge of the lienholder.

35 (3) If, in the case of permit revocation because of fraud, evidence is provided to
36 the commission disputing the charges of fraud. If the commission finds there was
37 no fraud after consideration of all of the evidence, the commission may order the
38 revocation annulled, and, if the permit expiration date has passed during the
39 pendency of the hearing on the appeal, the commission may order the department
40 to renew the permit upon payment of the fees.

1 (4) The denial of the permit transfer was arbitrary or capricious.

2 (5) The denial of the permit transfer was pursuant to **subdivision (g) or (h) of**
3 **Section 8239** and the applicant can show that the 18-month requirement cannot be
4 met due to death, physical illness, mental incapacity, or being called to active
5 military duty.

6 (b) Each appeal shall be heard and considered separately on its own merits.

7 **Comment.** Section 28180 continues former Fish and Game Code Section 8246.7 without
8 substantive change.

9 **§ 28185. Suspension or revocation of commercial salmon fishing privilege**

10 28185. (a) At any time after notice of an order suspending or revoking of a
11 person's commercial salmon fishing privilege is issued by the commission, and
12 before the order of suspension or revocation is final, the commission may, with the
13 agreement of the person subject to the action, compromise or dismiss the action to
14 suspend or revoke the commercial salmon fishing privilege in the best interests of
15 the state, or the commission may compromise or dismiss the action with the
16 agreement of the person subject to the action on terms and conditions, which may
17 include, but are not limited to, the payment of civil damages, the reduction of a
18 revocation to a suspension for a specified period of time, or any other terms and
19 conditions.

20 (b) The commission, after notice and opportunity for hearing and consultation
21 with the review board, may suspend or revoke the commercial fishing privilege,
22 authorized under a license issued for the purposes of **Section 7850 or 7852.3**, for
23 any violation of a term or condition of an agreement to compromise or dismiss a
24 separate suspension or revocation action which was made pursuant to subdivision
25 (a).

26 (c) If the commission orders a suspension or revocation of a person's
27 commercial salmon fishing privilege, any permit issued pursuant to this chapter
28 shall be renewed when the next renewal is due, or the permit shall expire as
29 provided in **Section 8233**.

30 (d) Civil damages imposed under **subdivision (b) of Section 8246** shall be due
31 and payable on or before a date which is 30 days after the compromise is entered
32 into.

33 (e) **Subdivision (b)** does not apply if an action is brought under **Section 2014** to
34 recover civil damages from the person subject to action under this section.

35 **Comment.** Subdivision (a) of Section 28185 continues former Fish and Game Code Section
36 8246(a) without substantive change.

37 Subdivision (b) continues former Fish and Game Code Section 8246(b) without substantive
38 change.

39 Subdivision (c) continues former Fish and Game Code Section 8246(c) without substantive
40 change.

41 Subdivision (d) continues former Fish and Game Code Section 8246.2(b) without substantive
42 change.

43 Subdivision (e) continues former Fish and Game Code Section 8246(d) without substantive
44 change.

1 **§ 28190. Determination of civil damages following suspension or revocation**

2 28190. The commission, in consultation with the department and the review
3 board, shall adopt regulations for the determination of civil damages provided for
4 in **subdivision (b) of Section 8246**, which give due consideration to the
5 appropriateness of the civil damages with respect to all of the following factors:

- 6 (a) The gravity of the violation.
- 7 (b) The good faith of the convicted licensee.
- 8 (c) The history of previous violations.
- 9 (d) The damage to the fishery.
- 10 (e) The cost of restoration of the fishery.

11 **Comment.** Section 28190 continues former Fish and Game Code Section 8246.2(a) without
12 substantive change.

13 **§ 28195. Display of permit expiration date**

14 28195. Each permit issued by the department shall display the expiration date on
15 the face of the permit.

16 **Comment.** Section 28195 continues the second sentence of former Fish and Game Code
17 Section 8233 without change.

18 **§ 28200. Affixing of commercial fishing salmon stamp**

19 28200. The first commercial fishing salmon stamp issued to an owner, or to that
20 owner's agent, shall be affixed to the commercial fishing license of that owner or
21 agent. Any additional commercial fishing salmon stamps issued to the owner or
22 the owner's agent pursuant to **paragraph (1) of subdivision (a) of Section 8234**
23 for purposes of obtaining permits for use of additional commercial salmon fishing
24 vessels shall be affixed to each additional vessel's registration issued pursuant to
25 **Section 7881**.

26 **Comment.** Section 28200 continues former Fish and Game Code Section 8234(b) without
27 substantive change.

28 Article 2. Commercial Salmon Fishing Review Board

29 **§ 28250. Creation of board**

30 28250. There is in the department a commercial salmon fishing review board,
31 which consists of five voting members appointed by the director.

32 **Comment.** Section 28250 continues the first sentence of former Fish and Game Code Section
33 8247 without change.

34 **§ 28255. Legislative declaration**

35 28255. The Legislature declares that individuals appointed as members of the
36 review board shall be chosen from the commercial salmon fishing industry in
37 order to represent and further the interest of the industry and commercial salmon
38 fishing vessel owners, and this representation serves the general public interest.

1 **Comment.** Section 28255 continues former Fish and Game Code Section 8247.5(a) without
2 change.

3 **§ 28260. Adoption of regulations by director**

4 28260. The director may adopt standards and criteria by regulation that shall be
5 applied by the review board in carrying out its activities under this chapter.

6 **Comment.** Section 28260 continues former Fish and Game Code Section 8247.7 without
7 substantive change.

8 **§ 28265. Composition of board**

9 29265. (a) Three of the voting members of the review board shall be owners of
10 permitted vessels appointed by the director from lists submitted by associations or
11 groups representing commercial salmon fishing vessel owners.

12 (b) Two of the voting members of the review board shall be owners of permitted
13 vessels appointed by the director from lists submitted by individual commercial
14 salmon fishing vessel owners.

15 (c) Any voting member of the review board may appoint an alternate member to
16 represent him or her at any meeting of the review board. The director may, within
17 60 days of the appointment, refuse an alternate member. The alternate shall serve
18 at the pleasure of the member who appointed him or her and shall have all the
19 powers and duties of a member of the commercial salmon fishing review board,
20 except that the alternate shall only participate and vote in meetings in the absence
21 of the member who appointed him or her.

22 **Comment.** Section 28265 continues former Fish and Game Code Section 8247.1 without
23 change.

24 **§ 28270. Exemption of board members**

25 28270. Each member of the review board is exempt from Section 87100 of the
26 Government Code, unless the result of his or her actions taken as board members
27 has a material financial effect on him or her distinguishable from its effect on
28 other members of the commercial salmon fishing industry generally.

29 **Comment.** Section 28270 former Fish and Game Code Section 8247.5(b) without change.

30 **§ 28275. Member terms**

31 28275. The terms of the members of the review board shall be for staggered four
32 year terms.

33 **Comment.** Section 28275 continues the first sentence of former Fish and Game Code Section
34 8247.2 without change.

35 **§ 28280. Removal of board member**

36 28280. The director may remove a member of the review board for cause.

37 **Comment.** Section 28280 continues the third sentence of former Fish and Game Code Section
38 8247 without change.

1 **§ 28285. Member compensation**

2 28285. (a) Necessary and proper expenses shall be paid to review board
3 members.

4 (b) Each member, or any alternate member participating on behalf of a regular
5 member in that member's absence, shall receive one hundred dollars (\$100) per
6 day, for each day of attendance and participation in meetings of the review board.

7 **Comment.** Section 28285 continues the second and third sentences of former Fish and Game
8 Code Section 8247.2 without substantive change.

9 **§ 28290. Meeting attendance by director or designee**

10 28290. The director or a designee of the director shall attend meetings of the
11 review board as a nonvoting member.

12 **Comment.** Section 28290 continues the second sentence of former Fish and Game Code
13 Section 8247 without change.

14 **§ 28295. Function of board**

15 28295. (a) The review board shall function as an advisory body to the
16 department regarding implementation of the provisions of this chapter.

17 (b) The review board shall act by a majority vote of the members present and
18 voting. The review board shall not act unless there is a quorum of the voting
19 members, including alternate members in the absence of their appointing
20 members, and the director or his or her designee if present.

21 **Comment.** Section 28295 continues former Fish and Game Code Section 8247.4 without
22 substantive change.

23 **§ 28300. Duties of review board**

24 28300. The review board shall do all of the following:

25 (a) Consider and make recommendations to the department on requests for
26 permit transfers.

27 (b) Recommend to the department, the number and classification of new vessel
28 permits to be issued annually, if any, pursuant to **Section 8243**.

29 (c) Consult with and advise the commission as required by **Sections 8246,**
30 **8246.2, and 8246.4.**

31 (d) Consult with the department and advise on the establishment of the vessel
32 classification system pursuant to **Section 8238**.

33 **Comment.** Section 28300 continues former Fish and Game Code Section 8247.8 without
34 substantive change.

35 **§ 28305. Obligation of board members**

36 28305. Members and alternate members of the review board shall act in the best
37 interest of the state, the department, and the commercial salmon fishing industry.
38 As members of the review board, no member or alternate member shall take any
39 action, because of his or her position, that results in a direct material effect on any

1 of them, distinguishable from its effect on other members of the commercial
2 salmon fishing industry.

3 **Comment.** Section 28305 continues former Fish and Game Code Section 8247.6 without
4 change.

5 CHAPTER 6. SALMON MANAGEMENT

6 **§ 28350. Department consultation**

7 28350. (a) The department shall consult with the advisory committee and
8 representatives of every user group known to the department on the progress being
9 made in the development of the annual and long-term salmon management plans.

10 (b) For purposes of this section, “advisory committee” means the Advisory
11 Committee on Salmon and Steelhead Trout, established pursuant to Resolution
12 Chapter 141 of the Statutes of 1983, except that there shall be two additional
13 members appointed by the Joint Committee on Fisheries and Aquaculture after
14 consultation with the Director of Fish and Game and the Fish and Game
15 Commission.

16 **Comment.** Subdivision (a) of Section 28350 continues former Fish and Game Code Section
17 7662 without change.

18 Subdivision (b) continues former Fish and Game Code Section 7660 without substantive
19 change.

20 CHAPTER 7. MISCELLANEOUS PROVISIONS

21 **§ 28400. Take from commercial passenger fishing boat**

22 28400. (a) If a commercial passenger fishing boat is used to take salmon or has
23 salmon aboard, in ocean waters north of Point Arguello, there shall be on board
24 that vessel a total number of commercial fishing salmon stamps sufficient to have
25 at least one for the operator and one for each crewmember required by United
26 States Coast Guard regulations, excepting an operator or a crewmember who is
27 exempt from the commercial fishing salmon stamp requirement of **Section 7860**.
28 The commercial fishing salmon stamps shall be affixed to either the commercial
29 fishing licenses of the operator and the crewmembers or, pursuant to subdivision
30 (b), to the commercial passenger fishing license. No person shall operate, or cause
31 to be operated, a commercial passenger fishing boat in violation of this
32 subdivision. Vessels permitted as commercial salmon fishing vessels pursuant to
33 **Section 8234** are exempt from the requirements of this subdivision.

34 (b) Notwithstanding **Section 1053**, the department may issue to the owner or
35 operator of a vessel licensed pursuant to this chapter, upon application and
36 payment of the fees prescribed in subdivision (c) of **Section 7860**, one commercial
37 fishing salmon stamp for the operator and not more than one additional
38 commercial salmon stamp for each crewmember required by the United States
39 Coast Guard regulations. The commercial fishing salmon stamps issued under this

1 subdivision shall be affixed to the vessel’s commercial passenger fishing boat
2 license issued pursuant to this chapter.

3 **Comment.** Section 28400 continues former Fish and Game Code Section 7925 without
4 substantive change.

5 **Staff Note.** Existing Fish and Game Code Section 7925(a) (which would be continued by
6 proposed Section 28400(a)) requires there to be on board a described vessel commercial fishing
7 salmon stamps sufficient for the operator and each crewmember, excepting an operator or a
8 crewmember who is exempt from the similar requirement stated in “subdivision (b) of Section
9 7860.” However, the reference to “subdivision (b) of Section 7860” is ambiguous, as that
10 subdivision cross-references other subdivisions in Section 7860 that also contain exemptions
11 from the commercial fishing salmon stamp requirement:

12 “(b) Except as provided in subdivision (f) or (g), the operator of a vessel on which salmon are
13 taken for commercial purposes shall not permit a person on board that vessel while salmon are
14 being taken or transported unless that person was less than 18 years of age or 70 years of age or
15 more on April 1 of the current license year or that person has a commercial fishing salmon stamp
16 affixed to the person’s commercial fishing license.

17

18 (f) Notwithstanding subdivision (a), one crewmember of a vessel for which a commercial
19 fishing salmon stamp is issued pursuant to subdivision (e) may be aboard that vessel and take
20 salmon for commercial purposes as a crewmember on that vessel without obtaining a commercial
21 fishing salmon stamp under the following conditions:

22 (1) The crewmember is designated by name and commercial fishing license number on a form
23 furnished by the department before salmon are taken on the vessel when that crewmember is
24 aboard.

25 (2) The crewmember has a valid commercial fishing license issued under Section 7850.

26 (3) The commercial fishing salmon stamp for the crewmember is affixed to the form prescribed
27 in paragraph (1) on which the vessel registration number of the vessel is entered and on which the
28 crewmember who is exempted by this subdivision is designated by the last entered name and
29 commercial fishing license number.

30 (g) Persons who are exempt from the license requirements, or who are not required to be
31 licensed, pursuant to Section 7850, are exempt from the requirements of this section.”

32 The staff reads the exemption in existing Section 7925(a) as intended to apply to all persons
33 exempted from the stamp requirement under any subdivision of Section 7860, and proposed
34 Section 28400(a) would therefore revise the exemption in existing Section 7925(a) to refer to
35 operators and crewmembers exempted from the commercial fishing salmon stamp requirement of
36 “Section 7860.”

37 **The staff invites comment on whether this revision changes the intended meaning of**
38 **existing Section 7925.**

39 **§ 28405. Use of landing tax**

40 28405. All moneys received as a landing tax from persons who receive salmon
41 from fishermen under the provisions of **Article 7.5 (commencing with Section**
42 **8040) of Chapter 1 of Part 3 of Division 6** shall be used only for the purpose of
43 propagating salmon.

44 **Comment.** Section 28405 continues former Fish and Game Code Section 8055 without
45 substantive change.

1 from any vessel, except at a weighing or measuring device approved by the
2 Bureau of Weights and Measures.

3 (b) Those sardines shall be weighed by a public weighmaster licensed as an
4 individual under the laws of this state, and a receipt as to that weight shall be
5 immediately issued by the weighmaster to the commercial fisherman at the time of
6 receipt of the products.

7 (c) Copies of the receipt shall be handled in the manner provided in **Chapter 3**
8 **(commencing with Section 14300)** and **Chapter 4 (commencing with Section**
9 **14500) of Title 9.**

10 **Comment.** Section 28600 continues the part of former Fish and Game Code Section 7702.1
11 applicable to sardines without substantive change.

12 **§ 28605. Compliance with use stated on landing receipt**

13 28605. No person shall receive, possess, or sell sardines for any purpose except
14 for that purpose specified on the fish receipt completed at the time of landing of
15 those sardines pursuant to **Section 8043.**

16 **Comment.** Section 28605 continues former Fish and Game Code Section 8154 without
17 substantive change.

18 **PART 18. SHAD**

19 **TITLE 1. SHAD GENERALLY**

20 **§ 28650. Anadromous fish**

21 28650. For the purposes of Part 2 (commencing with Section 25050), shad is an
22 anadromous fish.

23 **Comment.** Section 28650 is new.

24  **Staff Note.** Based on staff research, it appears that shad is an anadromous fish. **The staff**
25 **invites comment on whether that is correct.**

26 **§ 28655. Provisions not exclusive**

27 28655. The provisions of this part are not intended to be exclusive. Other
28 provisions that govern shad include, but are not limited to, the following
29 provisions:

30 (a) **Section 7361.**

31 (b) **Section 8437.**

32 **Comment.** Section 28655 is new.

33 **§ 28660. Importation of shad**

34 28660. (a) Shad legally taken in another state that permits the sale of that fish
35 may be imported into this state under regulations of the commission.

36 (b) Before the commission adopts any regulation pursuant to this section, a
37 public hearing shall be held in the San Francisco or Sacramento area.

1 (c) **Section 8394.5.**

2 (d) **Section 8496.**

3 (e) **Article 16 (commencing with Section 8561) of Chapter 2 of Part 3 of**
4 **Division 6.**

5 (f) **Section 8664.67.**

6 (g) **Section 8597.**

7 (h) **Section 8598.**

8 (i) **Section 9027.5.**

9 (j) **Section 9051.**

10 **Comment.** Section 28750 is new.

11 **§ 28755. Take generally**

12 28755. It is unlawful to take any white shark (*Carcharodon carcharias*), except
13 under permits issued pursuant to **Section 1002** for scientific or educational
14 purposes.

15 **Comment.** Section 28755 continues former Fish and Game Code Section 5517 without
16 substantive change.

17 **§ 28760. Shark fins**

18 28760. (a) As used in this section, “shark fin” means the raw, dried, or otherwise
19 processed detached fin, or the raw, dried, or otherwise processed detached tail, of
20 an elasmobranch.

21 (b) Except as otherwise provided in this section, it shall be unlawful for any
22 person to possess, sell, offer for sale, trade, or distribute a shark fin.

23 (c) Any person who holds a license or permit pursuant to **Section 1002** may
24 possess a shark fin or fins consistent with that license or permit.

25 (d) Any person who holds a license or permit issued by the department to take or
26 land sharks for recreational or commercial purposes may possess a shark fin or
27 fins consistent with that license or permit.

28 (e) Any person who holds a license or permit issued by the department to take or
29 land sharks for recreational or commercial purposes may possess, including for
30 purposes of consumption or taxidermy, or may donate to a person licensed or
31 permitted pursuant to Section 1002, a shark fin or fins consistent with that license
32 or permit.

33 (f) Nothing in this section prohibits the sale or possession of a shark carcass,
34 skin, or fin for taxidermy purposes pursuant to **Section 3087.**

35 **Comment.** Subdivisions (a) through (d) of Section 28760 continue former Fish and Game
36 Code Section 2021 without substantive change. Subdivision (e) of former Section 2021 is
37 obsolete and is not continued.

38 Subdivisions (e) and (f) continue former Fish and Game Code Section 2021.5(a) without
39 substantive change. Subdivision (a)(2) of former Section 2021.5 is obsolete and is not continued.

1 **§ 28765. Report by Ocean Protection Council**

2 28765. (a) The Ocean Protection Council shall submit an annual report to the
3 Legislature that lists any shark species that have been independently certified to
4 meet internationally accepted standards for sustainable seafood, as defined in
5 Section 35550 of the Public Resources Code, and adopted by the Ocean Protection
6 Council pursuant to Section 35617 of the Public Resources Code, including chain
7 of custody standards.

8 (b) The report required by subdivision (a) shall be submitted in compliance with
9 Section 9795 of the Government Code.

10 **Comment.** Section 28765 continues former Fish and Game Code Section 2021.5(b) without
11 substantive change.

12 **TITLE 2. COMMERCIAL PROVISIONS**

13 **CHAPTER 1. PRELIMINARY PROVISIONS**

14 **§ 28800. Application of title**

15 28800. For purposes of **Section 7600**, the provisions in this title are commercial
16 provisions.

17 **Comment.** Section 28800 is new. It is added for drafting convenience.

18 **CHAPTER 2. SHARK PARTS**

19 **§ 28850. Shark fin or tail**

20 28850. (a) Except as permitted by this code or by regulation of the commission,
21 it is unlawful to sell, purchase, deliver for a commercial purpose, or possess on a
22 commercial fishing vessel registered pursuant to **Section 7881**, a shark fin or tail,
23 or part of a shark fin or tail, that has been removed from the carcass.

24 (b) A thresher shark fin or tail that has been removed from the carcass and
25 whose original shape remains unaltered may be possessed on a registered
26 commercial fishing vessel, if the carcass corresponding to the fin or tail is also
27 possessed.

28 **Comment.** Section 28850 continues former Fish and Game Code Section 7704(c) without
29 substantive change.

30 **CHAPTER 3. ANGEL SHARKS**

31 **§ 28900. Measurement**

32 28900. (a) Angel shark total length shall be measured from the anterior end of
33 the head to the tip of the tail while the fish is lying in a position of natural repose.

34 (b) Angel shark alternate length shall be measured from the point where the
35 leading edge of the first dorsal fin meets the back to the tip of the tail.

1 (c) When measuring total length or alternate length, the tip of the tail may be
2 laid flat against the surface of the measuring device.

3 (d) Angel sharks may be constrained from lateral movement during
4 measurement by restraining devices approved by the department.

5 **Comment.** Section 28900 continues former Fish and Game Code Section 8388(b) without
6 substantive change.

7 **§ 28905. Size restrictions**

8 28905. (a) No female angel shark measuring less than 42 inches in total length
9 or 15 1/4 inches in alternate length, and no male angel shark measuring less than
10 40 inches in total length or 14 1/2 inches in alternate length, may be possessed,
11 sold, or purchased.

12 (b) Notwithstanding subdivision (a), ten percent of the angel sharks in any load
13 may measure not more than 1/2 inch less than the minimum sizes specified in this
14 section.

15 **Comment.** Section 28905 continues former Fish and Game Code Section 8388(a) without
16 substantive change.

17 **§ 28910. Take in gill or trammel net**

18 28910. (a) An angel shark taken in a gill or trammel net shall be landed (brought
19 ashore) with at least one intact pelvic fin and the tail fin attached.

20 (b) An angel shark taken in a gill or trammel net shall not be transferred to or
21 from another vessel, except that an angel shark may be transferred to or from a
22 vessel with a department observer on board. An observer shall observe and make a
23 written record of that transfer.

24 **Comment.** Subdivision (a) of Section 28910 continues former Fish and Game Code Section
25 8388(c) without substantive change.

26 Subdivision (b) continues former Fish and Game Code Section 8388(d) without substantive
27 change.

28 **CHAPTER 4. BASKING SHARKS**

29 **§ 28950. Regulation**

30 28950. (a) The commission may adopt regulations to manage basking sharks.

31 (b) A basking shark may not be taken commercially, unless the commission
32 adopts regulations for that activity and the taking is in accordance with those
33 regulations.

34 **Comment.** Section 28950 continues former Fish and Game Code Section 8599.4 without
35 substantive change.

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CHAPTER 4. LEOPARD SHARKS

§ 29000. Groundfish

29000. For the purposes of Part 9 (commencing with Section 26300), a leopard shark is a groundfish.

Comment. Section 29000 is new. See 14 C.C.R. § 28.56.

§ 29005. Take

29005. (a) A person shall not take, possess, sell, or purchase, for a commercial purpose, any leopard shark less than 36 inches in total length.

(b) Notwithstanding subdivision (a), a leopard shark less than 36 inches in total length possessed by a person for aquarium display on or before January 1, 1994, may be retained by that person, if a letter declaring that the shark was legally obtained prior to January 1, 1994, is provided to the Sacramento office of the department, on or before January 1, 1995.

Comment. Section 29005 continues former Fish and Game Code Section 8388.5 without substantive change.

CHAPTER 5. WHITE SHARKS

§ 29050. Take for commercial purpose

29050. (a) It is unlawful to take any white shark (*Carcharodon carcharias*) for a commercial purpose, except under a permit issued pursuant to **Section 1002** for scientific or educational purposes, or pursuant to subdivision (b) for scientific or live display purposes.

(b) Notwithstanding subdivision (a), a white shark may be taken incidentally in a commercial fishing operation using set gill nets, drift gill nets, or roundhaul nets. White shark taken pursuant to this subdivision shall not have the pelvic fin severed from the carcass, until after the white shark is brought ashore. White shark taken pursuant to this subdivision, if landed alive, may be sold for scientific or live display purposes.

(c) Any white shark killed or injured by any person in self-defense may not be landed.

Comment. Section 29050 continues former Fish and Game Code Section 8599 without substantive change.

§ 29055. Collection of data

29055. The department shall cooperate, to the extent that it determines feasible, with appropriate scientific institutions, to facilitate data collection on white sharks taken incidentally by commercial fishing operations.

Comment. Section 29055 continues former Fish and Game Code Section 8599.3 without change.

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PART 20. STURGEON

TITLE 1. STURGEON GENERALLY

CHAPTER 1. PRELIMINARY PROVISIONS

§ 29100. Anadromous fish

29100. For the purposes of Part 2 (commencing with Section 25050), a sturgeon is an anadromous fish.

Comment. Section 29100 is new. See 14 C.C.R. 27.90.

§ 29105. Provisions not exclusive

29105. The provisions of this part are not intended to be exclusive. Other provisions that govern sturgeon include, but are not limited to, the following provisions:

- (a) **Section 7155.**
- (b) **Section 7361.**
- (c) **Section 7856.**
- (d) **Section 15301.**

Comment. Section 29105 is new.

CHAPTER 2. TAKE, POSSESSION, OR SALE

§ 29150. Take or possession

29150. (a) It is unlawful to take or possess for a commercial purpose, buy or sell, or offer to buy or sell, a whole sturgeon, or part of a sturgeon, including, but not limited to, its eggs, except as follows:

(1) A sturgeon, part of a sturgeon, or sturgeon eggs, taken or possessed by, and the cultured progeny of, an aquaculturist who is registered under **Section 15101**, may be bought or sold subject to regulations of the commission.

(2) A sturgeon, part of a sturgeon, or sturgeon eggs, taken commercially in another state that permits the sale of sturgeon, and lawfully imported under **Section 2363**, may be possessed, bought, or sold.

(3) Sturgeon, or part of a sturgeon, taken pursuant to a sport fishing license, which is processed in accordance with **Section 7230**.

(b) For purposes of this section, it is prima facie evidence that a sturgeon or part of a sturgeon is possessed for a commercial purpose, if the possession is of more than two times the sport bag limit.

(c) Notwithstanding **Section 12002**, the punishment for a violation of this section is a fine of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), imprisonment in a county jail not to exceed one year, or both that fine and imprisonment.

1 (d) For conviction of a violation of this section, the court may order forfeiture of
2 any device or apparatus that is used in committing the offense, including, but not
3 limited to, any vehicle used or intended for use in committing the offense.

4 **Comment.** Subdivisions (a) and (b) of Section 29150 continue former Fish and Game Code
5 Section 7370 without substantive change.

6 Subdivision (c) continues former Fish and Game Code Section 12006(a)(1) without substantive
7 change.

8 Subdivision (d) continues the part of former Fish and Game Code Section 12157(c)(1)(C)
9 applicable to sturgeon without substantive change.

10 ☞ Staff Note. In a criminal prosecution for unlawful take of sturgeon under Section 7370
11 (which would be continued by proposed Section 29150), the prima facie evidence rule in Section
12 7370(b) (which would be continued by proposed Section 29150(b)) could be held
13 unconstitutional, based on authority holding that a presumption in a criminal statute may not
14 relieve the prosecution of its burden of proving each element of a charged offense beyond a
15 reasonable doubt. See *People v. Roder*, 33 Cal. 3d 491, 658 P.2d 1302, 189 Cal. Rptr. 501 (1983).

16 On the other hand, application of the prima facie evidence rule might be appropriate in a civil
17 or licensure proceeding based on a violation of Section 7370.

18 **The staff is conducting further research on this issue.**

19 CHAPTER 3. IMPORTATION

20 § 29200. Importation of sturgeon

21 29200. (a) Sturgeon legally taken in another state that permits the sale of that
22 fish may be imported into this state under regulations of the commission.

23 (b) Before the commission adopts any regulation pursuant to this section, a
24 public hearing shall be held in the San Francisco or Sacramento area.

25 **Comment.** Section 29200 continues the part of former Fish and Game Code Section 2363
26 applicable to sturgeon without substantive change.

27 CHAPTER 4. STURGEON EGG PROCESSING

28 § 29250. Required license

29 29250. (a) Every person engaged in the business of canning, curing, preserving,
30 packing, or otherwise processing, or dealing at wholesale in, the eggs of sturgeon
31 for human consumption, shall obtain a sturgeon egg processing license from the
32 department for that purpose. The license required by this title is in addition to any
33 other license, permit, or other authorization required by this code or by any other
34 provision of law.

35 (b) Possession of a sturgeon egg processing license issued pursuant to this title
36 authorizes the licensee to can, cure, preserve, pack, or otherwise process, or deal at
37 wholesale in, the eggs of sturgeon if, and only if, the eggs are lawfully taken or
38 lawfully possessed pursuant to **Section 7230 or 8371**.

39 **Comment.** Section 29250 continues former Fish and Game Code Section 10000 without
40 substantive change.

1 § 29255. License fee

2 29255. A sturgeon egg processing license shall be issued and delivered upon
3 application and the payment to the department of a base fee of one hundred dollars
4 (\$100), adjusted under Section 2780. The license shall be valid for a period of 12
5 months from the date of issuance.

6 **Comment.** Section 29255 continues the first sentence of former Fish and Game Code Section
7 10001 without substantive change.

8 § 29260. License term

9 29260. A sturgeon egg processing license shall be issued and delivered upon
10 application and the payment to the department of a base fee of one hundred dollars
11 (\$100), as adjusted under Section 2780. The license shall be valid for a period of
12 12 months from the date of issuance.

13 **Comment.** Section 29260 continues the second sentence of former Fish and Game Code
14 Section 10001 without substantive change.

15 § 29265. Required documentation

16 29265. Every person licensed pursuant to this chapter shall make a true and
17 legible record of each transaction involving the eggs of sturgeon. This
18 documentation shall show all of the following:

19 (a) The weight of the eggs received.

20 (b) The name and address of the person from whom the eggs were received.

21 (c) If the eggs were obtained from a sturgeon that was artificially propagated by
22 a person other than the licensee, the name and address of that person.

23 (d) If the eggs were obtained from a sturgeon that was not taken by the licensee,
24 the name and address of the person from whom the licensee obtained the sturgeon
25 from which the eggs were obtained.

26 (e) The date of receipt.

27 (f) If imported into this state, the place where the sturgeon were taken.

28 (g) Whether the eggs are to be processed by the recipient or sold by him or her
29 to another for processing, and, if the eggs are to be sold for processing by another,
30 the name and address of that person.

31 (h) Any other information that the department may require and specify on any
32 form provided.

33 **Comment.** Section 29265 restates former Fish and Game Code Section 10002 without
34 substantive change.

35 **Staff Note.** Proposed Section 29265(b)-(d) is intended to restate existing Fish and Game
36 Code Section 10002(b) to improve the clarity of that provision, without changing its substantive
37 effect. The existing provision reads as follows:

38 “10002. Every person licensed pursuant to this division shall make a true and legible record of
39 each transaction involving the eggs of sturgeon. This documentation shall show all of the
40 following:

41

42 (b) The name and address of the person from whom the eggs were received, and, if different,

1 the name and address of the person who artificially propagated the sturgeon from which the eggs
2 were obtained or the name and address of the person from whom the sturgeon were received from
3 which the eggs were obtained.”

4 **The staff invites comment on whether the restatement would cause any substantive**
5 **change in the meaning of the provision.**

6 **§ 29270. Retention and inspection of documentation**

7 29270. (a) The documentation required by **Section 10002** shall be kept by the
8 person or business holding the sturgeon egg processing license for a period of two
9 years from the date of receipt of eggs, and shall be available for inspection during
10 normal business hours by the department.

11 (b) Any information received or requested by the department shall be
12 confidential, and the records shall not be public records, except that the
13 information contained in the records may be compiled and published as summaries
14 in a manner that will not disclose the individual record or business of any person.

15 **Comment.** Subdivision (a) of Section 29270 continues former Fish and Game Code Section
16 10003 without substantive change.

17 Subdivision (b) continues former Fish and Game Code Section 10004 without change.

18 **§ 29275. Punishment for violation**

19 29275. (a) Any person convicted of a violation of a provision of this chapter, or
20 a violation of any other provision of this code or any regulation adopted pursuant
21 to this code relating to sturgeon, shall be prohibited from engaging in the business
22 of canning, curing, preserving, packing, or otherwise processing, or dealing at
23 wholesale or retail in the eggs of sturgeon in this state, for one year from the date
24 of the conviction.

25 (b) Any person convicted of a second or subsequent violation of a provision of
26 this chapter, or a violation of any other provision of this code or any regulation
27 adopted pursuant to this code relating to sturgeon, within five years of another
28 offense resulting in a conviction of a violation of any of those provisions, is
29 prohibited from engaging in any activity for which a sturgeon egg processing
30 license is required, for five years from the date of the last conviction.

31 (c) The commission shall revoke any license issued pursuant to this chapter to a
32 person who is prohibited from engaging in that business under this section. No
33 sturgeon egg processing license revoked pursuant to this section shall be issued,
34 reissued, or reinstated during the period of prohibition prescribed in this section.

35 (d) It is unlawful for any person to obtain, or attempt to obtain, a sturgeon egg
36 processing license pursuant to this chapter during the period of prohibition
37 prescribed in this section.

38 **Comment.** Section 29275 continues former Fish and Game Code Section 10005 without
39 substantive change.

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TITLE 2. COMMERCIAL PROVISIONS

§ 29350. Application of title

29350. For purposes of **Section 7600**, the provisions in this title are commercial provisions.

Comment. Section 29350 is new. It is added for drafting convenience.

§ 29355. Required return to water if caught in net

29355. (a) Any sturgeon that is taken in any type of net shall, regardless of its condition, be immediately freed and removed from the net by the fisherman, and immediately returned to the water without further harm.

(b) A commercial fisherman shall not have any sturgeon, whether dead or alive, in his or her possession, at any time when conducting netting operations or when going to or from those operations, except when releasing a sturgeon from a net.

(c) The return of sturgeon to the water pursuant to this section is not deterioration, waste, or spoilage of fish for purposes of **Section 7704**.

Comment. Section 29355 continues the part of former Fish and Game Code Section 8370 applicable to sturgeon without substantive change.

§ 29360. Use of net in waters upstream from Carquinez Bridge

29360. (a) It is unlawful for any person to use, operate, or assist in using or operating any net to take sturgeon for a commercial purpose in any tidal waters lying upstream from the Carquinez Bridge, or to possess a net on a boat in those waters that is unlawful to use in those waters.

(b) The punishment for a first violation of this section is a fine of not more than two thousand dollars (\$2,000), imprisonment in a county jail for not more than one year, or both that fine and imprisonment.

(c) A second or subsequent violation of this section is punishable by a fine of not less than two thousand dollars (\$2,000) nor more than four thousand dollars (\$4,000), or imprisonment in the county jail for one year, or both that fine and imprisonment.

Comment. Subdivision (a) of Section 29360 continues the part of former Fish and Game Code Section 8670 applicable to sturgeon without substantive change.

Subdivision (b) continues former Fish and Game Code Section 12002(b)(5) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 12003 without substantive change.

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PART 21. SURFPERCH

TITLE 1. SURFPERCH GENERALLY

§ 29400. Provisions not exclusive

29400. The provisions of this part are not intended to be exclusive. Other provisions that govern surfperch include, but are not limited to, the following provisions:

- (a) **Section 10664.**
- (b) **Section 10666.**
- (c) **Section 10667.**

Comment. Section 29400 is new.

TITLE 2. COMMERCIAL PROVISIONS

§ 29450. Application of title

29450. For purposes of **Section 7600**, the provisions in this title are commercial provisions.

Comment. Section 29450 is new. It is added for drafting convenience.

§ 29455. Take

29455. (a) Upon the recommendation of the director regarding management measures for surfperch of the family Embiotocidae, the commission may adopt regulations to manage the commercial surfperch resource and fisheries consistent with **Part 1.7 (commencing with Section 7050)**, including, but not limited to, adoption of changes to the prohibitions imposed under subdivision (b).

(b) Except as may be authorized under subdivision (a), surfperch of the family Embiotocidae may be taken only between July 16 and April 30, except shiner surfperch (*Cymatogaster aggregata*), which may be taken, sold, or purchased at any time. Surfperch may be sold or purchased only between July 16 and May 10, except as may be authorized under subdivision (a). South of a line drawn east and west through Point Arguello, barred surfperch, redbtail surfperch, and calico surfperch may not be taken for a commercial purpose, except as may be authorized under subdivision (a). Surfperch of these three species that have been taken north of the line during the open season and shipped south of the line may be sold or purchased under regulations that the commission may prescribe.

Comment. Section 29455 continues former Fish and Game Code Section 8395 without substantive change.

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PART 22. SWORDFISH

TITLE 1. SWORDFISH GENERALLY

§ 29500. Provisions not exclusive

29500. The provisions of this part are not intended to be exclusive. Other provisions that govern swordfish include, but are not limited to, the following provisions:

(a) Section 8385.

(b) Article 16 (commencing with Section 8561) of Chapter 2 of Part 3 of Division 6.

(c) Section 8684.

(d) Section 9029.

Comment. Section 29500 is new.

TITLE 2. COMMERCIAL PROVISIONS

§ 29550. Application of title

29550. For purposes of Section 7600, the provisions in this title are commercial provisions.

Comment. Section 29550 is new. It is added for drafting convenience.

§ 29555. Permit requirement

29555. (a) A swordfish shall not be taken, possessed aboard a boat, or landed by a person, for commercial purposes, except under a valid swordfish permit. If more than one person is aboard the boat, at least one person shall have a swordfish permit issued to that person that has not been revoked or suspended, subject to regulations adopted by the commission.

(b) The fee for a permit issued pursuant to subdivision (a) is three hundred thirty dollars (\$330). This permit fee does not apply to the holder of a valid drift gill net shark and swordfish permit required under Article 16 (commencing with Section 8560) of Chapter 2.

Comment. Subdivision (a) Section 29555 continues former Fish and Game Code Section 8394 without change.

Subdivision (b) continues the first sentence of former Fish and Game Code Section 8394.5 without substantive change.

Subdivision (c) continues the second sentence of former Fish and Game Code Section 8394.5 without substantive change.

Staff Note. The second sentence of existing Fish and Game Code Section 8394 (which would be continued by the second sentence of proposed Section 29555(a)) requires a specified person to have a swordfish permit that has not been revoked or suspended, “subject to regulations adopted by the commission.” Is the quoted language meant to describe the basis for the referenced revocation or suspension (i.e., “revoked or suspended pursuant to regulations adopted by the Commission”), or is the quoted language meant as a caveat to the whole second sentence of

1 Section 8394 (i.e., “at least one person shall have a swordfish permit issued to that person that has
2 not been revoked or suspended, *except as otherwise provided by* regulations adopted by the
3 commission”)?

4 **The staff invites comment on the meaning of the clause “subject to regulations adopted by
5 the commission.”**

6 PART 23. TROUT

7 TITLE 1. TROUT GENERALLY

8 CHAPTER 1. PRELIMINARY PROVISIONS

9 **§ 29600. Provisions not exclusive**

10 29600. The provisions of this part are not intended to be exclusive. Other
11 provisions that govern trout include, but are not limited to, the following
12 provisions:

13 (a) **Section 2349.**

14 (b) **Section 2720.**

15 (c) **Section 2786.**

16 (d) **Section 7145.**

17 (e) **Section 7155.**

18 (f) **Section 7260.**

19 (g) **Section 7261.**

20 (h) **Section 8385.**

21 (i) **Section 15005.**

22 **Comment.** Section 29600 is new.

23 **§ 29605. Legislative declaration**

24 29605. (a) The Legislature finds and declares all of the following:

25 (1) California has the greatest biodiversity of native trout species of any state in
26 the nation. Trout can be found in more than 18,000 miles of California’s cooler
27 streams. California’s trout are the principal sport fish in 3,581 cold-water lakes
28 and reservoirs.

29 (2) Self-sustaining native trout populations in “Heritage Trout Waters” that
30 retain and promote genetic trout diversity and overall sustainable watershed and
31 ecosystem environmental health are state policy.

32 (b) Funding for “Heritage Trout Waters” is a priority for the Hatchery and
33 Inland Fisheries Fund.

34 (c) The commission may designate “Heritage Trout Waters” to recognize the
35 beauty, diversity, historical significance, and special values of California’s native
36 trout. The commission’s designation shall meet both of the following criteria:

37 (1) Only waters supporting populations that best exemplify indigenous strains of
38 native trout within their historic drainages may qualify for designation.

1 (2) Only waters providing anglers with an opportunity to catch native trout
2 consistent with the conservation of the native trout may qualify for designation.

3 (3) Any stocking of heritage trout waters shall meet the criteria established by
4 **Chapter 7.2 (commencing with Section 1725) of Division 2.**

5 **Comment.** Section 29605 continues former Fish and Game Code Section 7260 without
6 substantive change.

7 CHAPTER 2. SHIPMENT OF TROUT

8 **§ 29650. Transport of trout**

9 29650. (a) It is unlawful at any time to offer for shipment, ship, or receive for
10 shipment, or transport from this state any trout taken in the waters of this state,
11 except as provided in subdivision (b).

12 (b) The following persons may personally transport from this state not more than
13 one daily bag limit of trout:

14 (1) The holder of a nonresident sport fishing license.

15 (2) A person on active military duty with the armed forces of the United States
16 who possesses a valid angling license.

17 (3) A person on active military duty with an auxiliary branch of the armed forces
18 of the United States who possesses a valid angling license.

19 **Comment.** Section 29650 restates former Fish and Game Code Section 2356 without
20 substantive change.

21 **Staff Note.** Proposed Section 29650 is intended to restate existing Fish and Game Code
22 Section 2356 to improve the clarity of that provision, without changing its substantive effect. The
23 existing provision reads as follows:

24 “2356. It is unlawful at any time to offer for shipment, ship, or receive for shipment, or
25 transport from this state any trout taken in the waters of this state, except that the holder of a
26 nonresident angling license, or any person on active military duty with the armed forces of the
27 United States or on active military duty with an auxiliary branch thereof who possesses a valid
28 angling license, may personally transport from this state not more than one daily bag limit of
29 trout.”

30 **The staff invites comment on whether the restatement would cause any substantive**
31 **change in the meaning of the provision.**

32 **§ 29655. Shipment of trout into area where season closed**

33 29655. It is unlawful to ship trout into an area where the season is closed, unless
34 the shipment is accompanied by a written statement containing the name and
35 address of, and signed by, the person taking the trout, and countersigned, for the
36 purpose of identification, by the agent of the carrier to whom the trout are offered
37 for shipment.

38 **Comment.** Section 29655 continues former Fish and Game Code Section 2358 without
39 substantive change.

1 (b) The department, in administering its existing wild trout program, shall
2 maintain an inventory of all California trout streams and lakes to determine the
3 most suitable angling regulations for each stream or lake. The department shall
4 determine for each stream or lake whether it should be managed as a wild trout
5 fishery, or whether its management should involve the temporary planting of
6 native trout species to supplement wild trout populations that is consistent with
7 this chapter. In maintaining the inventory, the department shall give priority to
8 those streams and lakes that have the highest biological potential for producing
9 sizeable wild trout, which are inhabited by rare species, or where the quality of the
10 fishery is threatened or endangered and take into consideration public use. The
11 biological and physical inventories prepared and maintained for each stream,
12 stream system, or lake shall include an assessment of the resource status, threats to
13 the continued well-being of the fishery resource, the potential for fishery resource
14 development, and recommendations, including necessary changes in the allowed
15 take of trout, for the development of each stream or lake to its full capacity as a
16 fishery, consistent with this chapter.

17 (c) This section does not provide any public entity or private party with any new
18 or additional authority to affect the management of, or access to, any private land
19 without the written consent of the owner. Privately owned lakes and ponds not
20 open to the use of the general public shall be subject to this section only with the
21 written consent of the owner. This chapter shall not be construed as authorizing or
22 requiring special treatment of adjacent land areas or requiring land use restrictions.
23 It is the intent of the Legislature that this chapter should not diminish the existing
24 authority of the department.

25 (d) The department shall make the inventory maintained pursuant to subdivision
26 (b) publicly available on the department's Internet Web site and the department
27 shall continuously revise that inventory with the goal of reviewing every
28 watershed once per decade.

29 **Comment.** Section 29715 continues former Fish and Game Code Section 1726.4 without
30 change.

31 **§ 29720. Declaration regarding funding**

32 29720. The Legislature further finds and declares that activities and programs
33 mandated by this chapter are a continuation and perpetuation of the department's
34 existing wild trout program and other programs, and as such they shall be funded
35 from existing budgetary resources.

36 **Comment.** Section 29720 continues former Fish and Game Code Section 1726.5 without
37 change.

38 **§ 29725. Declaration of intended development**

39 29725. (a) In order to provide for a diversity of available angling experiences
40 throughout the state, it is the intent of the Legislature that the commission
41 maintain the existing wild trout program, and as part of the program, develop

1 additional wild trout waters in the more than 20,000 miles of trout streams and
2 approximately 5,000 lakes containing trout in California.

3 (b) The department shall prepare a list of no less than 25 miles of stream or
4 stream segments and at least one lake that it deems suitable for designation as wild
5 trout waters. The department shall submit this list to the commission for its
6 consideration at the regular October commission meeting.

7 (c) The commission may remove any stream or lake that it has designated as a
8 wild trout fishery from the program at any time. If any of those waters are
9 removed from the program, an equivalent amount of stream mileage or an
10 equivalent size lake shall be added to the wild trout program.

11 (d) The department shall prepare and complete management plans for all wild
12 trout waters not more than three years following their initial designation by the
13 commission and update the management plan every five years following
14 completion of the initial management plan.

15 **Comment.** Section 29725 continues former Fish and Game Code Section 1727 without
16 change.

17 **§ 29730. Update of trout management plan**

18 29730. (a) Every five years the department shall update the Strategic Plan for
19 Trout Management published in November 2003 as necessary to guide the state's
20 trout management.

21 (b) The Strategic Plan for Trout Management shall be intended to ensure all of
22 the following:

23 (1) Thriving and self-sustaining, wild and native trout populations throughout
24 their historic ranges.

25 (2) Providing and improving angling opportunities for wild and native trout and
26 other trout.

27 (3) Providing for the conservation of wild and native trout.

28 (4) Environmental sustainability and overall ecosystem and watershed health.

29 (c) The Strategic Plan for Trout Management shall be guided by all of the
30 following considerations:

31 (1) Adaptively managing trout populations, including, but not limited to,
32 stocking practices, to establish thriving and self-sustaining native and wild trout
33 fisheries in wild trout waters and, where possible, in other waters.

34 (2) Increasing angler satisfaction.

35 (3) Ensuring appropriate age distribution of wild trout when appropriate.

36 (4) Establishing ecologically and environmentally sustainable hatchery and
37 stocking practices for native trout, including, but not limited to, the following:

38 (A) Hatchery and stocking practices consistent with this chapter.

39 (B) Stocking plans shall include consideration of angler satisfaction and public
40 use of, and access to, the waters for angling. This may include, but is not limited
41 to, harvest and catch rates, including, but not limited to, trophy catch rates, the

1 potential for high angler satisfaction, and where appropriate, put and grow
2 stocking.

3 (C) Native trout shall be preferentially stocked when stocking is employed.

4 (D) Designing stocking plans to maintain and optimize the genetic diversity of
5 trout populations and to be consistent with the direction provided by the strategic
6 trout management team.

7 (E) Stocking plans for species listed in **Section 7261** shall not exceed the
8 documented biological carrying capacity of the water or ecosystem.

9 (5) Integrating stakeholder involvement into the planning process.

10 (6) Monitoring and evaluating management processes through angler surveys,
11 public meetings coordinated with county fish and game commissions, or by other
12 means.

13 (d) The department shall prepare and complete trout management plans
14 consistent with the Strategic Plan for Trout Management for all wild trout waters
15 not more than three years following their initial designation by the commission.
16 The department shall update the management plan every five years or as necessary
17 following completion of the initial management plan. The department shall
18 prepare trout management plans for other waters consistent with the Strategic Plan
19 for Trout Management as appropriate.

20 (e) Before implementation, the Strategic Plan for Trout Management produced
21 by the department shall be reviewed by the strategic trout management team, the
22 hatchery operations committee, and an ad hoc peer review committee convened by
23 the department to ensure compliance with sound management practices, improved
24 genetic diversity, and use of the best available scientific information.

25 (f) The Strategic Plan for Trout Management and plans completed pursuant to
26 subdivision (d) shall be publicly available on the department's Internet Web site.

27 **Comment.** Section 29730 continues former Fish and Game Code Section 1728 without
28 change.

29 **§ 29735. Priority for stocking native hatchery-produced species**

30 29735. (a) The department shall give priority to stocking native hatchery-
31 produced species in California's waters, where stocking is determined to be
32 appropriate by the department. Stocking of hatchery-produced fish is not
33 appropriate in all of California's waters, including, but not limited to, stocking in
34 California's waters that would adversely affect species listed under the federal
35 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or the California
36 Endangered Species Act (**Chapter 1.5 (commencing with Section 2050) of**
37 **Division 3**).

38 (b) Hatchery-produced trout shall be stocked to support sustainable angling
39 recreation and promote angler access to trout fishing, including, but not limited to,
40 urban fisheries.

1 (c) The department may provide outreach and educational materials to all
2 anglers to promote awareness of environmental sustainability, ecosystem health,
3 fish genetics, angling opportunities, and fish population management.

4 (d) Educational programs utilizing the hatcheries shall be encouraged.

5 (e) The department shall ensure that all trout stocked in waters of the state for
6 recreational purposes are unable to reproduce through triploidy or other means,
7 with the exception of fish planted into brood stock lakes, surplus brood stock
8 planted according to fishery management decisions, fish planted to supplement
9 waters that the department has determined to be genetically isolated from native
10 fish populations, and native trout species produced for recovery and restoration
11 within their native range.

12 (f) The department may develop, conduct, and respond to regular angler
13 preference and satisfaction surveys. This is not a substitute for a preferred
14 scientific data collection and monitoring program that would facilitate adaptive
15 management of California's inland trout fisheries.

16 (g) The department shall review angling regulations periodically and adjust
17 those regulations to ensure consistency with the strategic plan described in **Section**
18 **1728**.

19 **Comment.** Section 29735 continues former Fish and Game Code Section 1729 without
20 substantive change.

21 **§ 29740. Intradepartmental strategic trout management team**

22 29740. (a) By January 1, 2014, the department shall form an intradepartmental
23 strategic trout management team to provide direction and oversee trout
24 management statewide. Working under the framework of the Strategic Plan for
25 Trout Management, the strategic trout management team shall direct and
26 implement focused management and monitoring efforts for trout at the watershed
27 level, in cooperation with local stakeholders.

28 (b) The strategic trout management team shall be responsible for developing
29 basin management plans that are conservation based and are consistent throughout
30 California for inland watersheds.

31 (c) The basin plans in subdivision (b) shall be reviewed by an ad hoc peer
32 review committee, which may be convened under the guidance of the
33 department's Science Institute to ensure compliance with sound management
34 practices and utilization of the best available scientific information.

35 **Comment.** Section 29740 continues former Fish and Game Code Section 1730 without
36 change.

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CHAPTER 4. STEELHEAD TROUT

Article 1. General Provisions

§ 29800. Anadromous fish

29800. For the purposes of Part 2 (commencing with Section 25050), a steelhead trout is an anadromous fish.

Comment. Section 29800 is new.

Staff Note. Based on staff research, it appears that a steelhead trout is an anadromous fish. See existing Fish and Game Code Section 6900 et seq.

The staff invites comment on whether that is correct.

§ 29805. Provisions not exclusive

29805. This chapter includes some but not all provisions of this code that govern steelhead trout. Other provisions that govern steelhead trout include, but are not limited to, the following provisions:

- (a) **Chapter 8 (commencing with Section 2761) of Division 3.**
- (b) **Section 7149.2.**
- (c) **Section 7361.**
- (d) **Section 13005.**
- (e) **Section 15007.**

Comment. Section 29805 is new.

Article 2. Take

§ 29850. Hook other than in mouth

29850. (a) It is unlawful, in inland waters, to kill or retain in possession any steelhead that has not taken the bait or lure in its mouth.

(b) Any steelhead hooked in inland waters other than in its mouth shall be released unharmed.

Comment. Section 29850 continues the part of former Fish and Game Code Section 5514 applicable to steelhead trout without substantive change.

Staff Note. See discussion of the proposed revision of this section following proposed Section 27405.

Article 3. Report-Restoration Card

§ 29900. Required trout fishing report-restoration card

29900. (a) In addition to a valid California sport fishing license and any applicable sport license stamp issued pursuant to this code, a person taking steelhead trout in inland waters shall have in his or her possession a valid nontransferable steelhead trout fishing report-restoration card issued by the department. The cardholder shall record certain fishing information on the card as

1 designated by the department. The month, day, and location fished shall be
2 recorded before the cardholder begins fishing for the day and when the cardholder
3 moves to another location listed on the back of the report-restoration card. The
4 cardholder shall immediately record catch information upon keeping a steelhead
5 trout and immediately record catch information regarding released steelhead trout
6 whenever the cardholder finishes fishing for the day, or moves to another location
7 listed on the back of the report-restoration card. The cardholder shall return the
8 card to the department on a schedule or date established by the department.

9 (b) The base fee for the card shall be five dollars (\$5) for the 2004 license year,
10 which may be adjusted annually thereafter pursuant to **Section 713**. The funds
11 received by the department from the sale of the card shall be deposited in the Fish
12 and Game Preservation Fund, and shall be available for expenditure upon
13 appropriation by the Legislature. The department shall maintain the internal
14 accountability necessary to ensure that all restrictions and requirements pertaining
15 to the expenditure of these funds are met.

16 (c) The commission shall adopt regulations necessary to implement this section.
17 These regulations shall include, but not be limited to, procedures necessary to
18 obtain appropriate steelhead trout resources management information, a
19 requirement that the card contain a statement explaining potential uses of the funds
20 received as authorized by **Section 7381**, and a requirement that the cards be
21 returned to the department.

22 **Comment.** Section 29900 continues former Fish and Game Code Section 7380 without
23 substantive change.

24 **§ 29905. Use of revenue**

25 29905. (a) Revenue received pursuant to **Section 7380** may be expended, upon
26 appropriation by the Legislature, only to monitor, restore, or enhance steelhead
27 trout resources consistent with **Sections 6901 and 6902**, and to administer the
28 fishing report-restoration card program. The department shall submit all proposed
29 expenditures, including proposed expenditures for administrative purposes, to the
30 Advisory Committee on Salmon and Steelhead Trout for review and comment
31 before submitting a request for inclusion of the appropriation in the annual Budget
32 Bill. The committee may recommend revisions in any proposed expenditure to the
33 Legislature and the commission.

34 (b) The department shall report to the Legislature on or before July 1, 2016,
35 regarding the steelhead trout fishing report-restoration card program's projects
36 undertaken using revenues derived pursuant to that program, the benefits derived,
37 and its recommendations for revising the fishing report-restoration card
38 requirement, if any. The report submitted pursuant to this subdivision shall be
39 submitted in compliance with Section 9795 of the Government Code.

40 **Comment.** Section 29905 continues former Fish and Game Code Section 7381 without
41 substantive change.

1 **§ 29910. Inoperative date of article**

2 29910. This article shall become inoperative on July 1, 2017, and, as of January
3 1, 2018, is repealed, unless a later enacted statute that is enacted before January 1,
4 2018, deletes or extends the date on which this article becomes inoperative or is
5 repealed.

6 **Comment.** Section 29910 continues former Fish and Game Code Section 7382 without
7 substantive change.

8 **TITLE 2. COMMERCIAL PROVISIONS**

9 **CHAPTER 1. TROUT GENERALLY**

10 **§ 29950. Application of title**

11 29950. For purposes of **Section 7600**, the provisions in this title are commercial
12 provisions.

13 **Comment.** Section 29950 is new. It is added for drafting convenience.

14 **§ 29955. Sale or purchase**

15 29955. Except as otherwise provided in this title, it is unlawful to sell or
16 purchase any species of trout.

17 **Comment.** Section 29955 continues former Fish and Game Code Section 8430 without
18 change.

19 **CHAPTER 2. STEELHEAD AND DOLLY VARDEN TROUT**

20 **§ 30000. Taken from out of state**

21 30000. (a) Dolly Varden or steelhead trout taken outside the state may be
22 possessed and sold within the state after inspection and tagging in accordance with
23 regulations prescribed by the commission.

24 (b) The inspection and tagging shall be paid for by the person submitting the
25 trout for inspection and tagging.

26 (c) Notwithstanding subdivision (a), steelhead trout taken outside the state may
27 not be sold or possessed in **District 1 1/2** in excess of the daily bag limit on
28 steelhead trout for that district.

29 **Comment.** Subdivisions (a) and (b) of Section 30000 continues former Fish and Game Code
30 Section 8431 without substantive change.

31 Subdivision (c) continues former Fish and Game Code Section 8432 without substantive
32 change.

33 **§ 30005. Take with purse or round haul net**

34 30005. Steelhead may not be taken with a purse or round haul net.

35 **Comment.** Section 30005 continues the part of former Fish and Game Code Section 8756
36 applicable to steelhead without substantive change.

1 TITLE 2. COMMERCIAL PROVISIONS

2 § 30450. Application of title

3 30450. For purposes of **Section 7600**, the provisions in this title are commercial
4 provisions.

5 **Comment.** Section 30450 is new. It is added for drafting convenience.

6 § 30455. Size restrictions

7 30455. (a) Yellowtail shall be measured from the tip of the lower jaw to the end
8 of the longer lobe of the tail.

9 (b) Yellowtail measuring equal to or greater than 28 inches in length may be
10 taken with hook and line at any time.

11 (c) Yellowtail measuring less than 28 inches in length may not be sold or
12 purchased, except that not more than five yellowtail per day of any length may be
13 possessed by the holder of a commercial fishing license for noncommercial use, if
14 taken incidentally in commercial fishing.

15 **Comment.** Subdivision (a) of Section 30455 continues the part of former Fish and Game Code
16 Section 8386 applicable to yellowtail without substantive change.

17 Subdivision (b) continues the part of former Fish and Game Code Section 8382 applicable to
18 yellowtail without substantive change.

19 Subdivision (c) continues the part of former Fish and Game Code Section 8384 applicable to
20 yellowtail without substantive change.

21 § 30460. Possession restrictions

22 30460. From May 1 to August 31, inclusive, all of the following are unlawful:

23 (a) Possession by one person on a boat, barge, or other vessel of more than 500
24 pounds of yellowtail.

25 (b) Possession by two or more persons on a boat, barge, or other vessel a
26 combined weight of more than 500 pounds of yellowtail per person.

27 (c) Possession by five or more persons on a boat, barge, or other vessel a
28 combined weight of more than 2,500 pounds of yellowtail.

29 **Comment.** Section 30460 continues former Fish and Game Code Section 8387 without
30 substantive change.

31 § 30465. Use of purse seines or round haul nets

32 30465. (a) It is unlawful to use any purse seine or round haul net to take a
33 yellowtail.

34 (b) It is unlawful to possess a yellowtail, except those taken south of the
35 international boundary between the United States and Mexico, and imported into
36 the state under regulations of the commission as provided in **Section 2362**, on any
37 boat carrying or using any purse seine or round haul net, including, but not limited
38 to, a bait net as described in **Section 8780**.

39 (c) Notwithstanding the provisions of this section, the department may issue
40 permits to hook and line commercial fishermen to possess a bona fide bait net on

1 their vessels for the purpose of taking bait for their own use only.

2 **Comment.** Section 30465 continues the parts of former Fish and Game Code Section 8623(a),
3 (b), and (e) applicable to yellowtail without substantive change.

4 **Staff Note.** The part of existing Fish and Game Code Section 8623(a), (b), and (e) that
5 appears applicable to yellowtail would be continued by proposed Section 30465. (Subdivisions
6 (c) and (d) of Section 8623, which relate to the use of gill nets, would be continued by proposed
7 provisions located among other gill net provisions.)

8 However, because Section 8623 addresses multiple subjects, the intended meaning of existing
9 subdivision (e) of that section (which would be continued by proposed Section 30465(c)) is
10 potentially ambiguous.

11 Existing Section 8623 in its entirety reads as follows:

12 “8623. (a) It is unlawful to use any purse seine or round haul net to take yellowtail, barracuda,
13 or white sea bass.

14 (b) It is unlawful to possess any yellowtail, barracuda, or white sea bass, except those taken
15 south of the international boundary between the United States and Mexico, and imported into the
16 state under regulations of the commission as provided in Section 2362, on any boat carrying or
17 using any purse seine or round haul net, including, but not limited to, a bait net as described in
18 Section 8780.

19 (c) Gill nets with meshes of a minimum length of 3 1/2 inches may be used to take yellowtail
20 and barracuda.

21 (d) Gill nets with meshes of a minimum length of six inches may be used to take white sea
22 bass; however, during the period from June 16 to March 14, inclusive, not more than 20 percent
23 by number of a load of fish may be white seabass 28 inches or more in total length, up to a
24 maximum of 10 white seabass per load, if taken in gill nets or trammel nets with meshes from 3
25 1/2 to 6 inches in length.

26 (e) Notwithstanding the provisions of this section, the department may issue permits to hook
27 and line commercial fishermen to possess a bona fide bait net on their vessels for the purpose of
28 taking bait for their own use only.

29 As the only subdivision in existing Section 8623 that contains a reference to a bait net, or
30 appears to have any relevance to bait nets, is existing Section 8623(b) (which would be continued
31 by proposed Section 30465(b)), proposed Section 30465(c) would revise the clause in existing
32 Section 8623(e) that reads “Notwithstanding the provisions of this section” to read
33 “Notwithstanding subdivision (b).”

34 **The staff invites comment on whether this revision preserves the intended meaning of**
35 **existing Section 8623(e).**

36

1

DIVISION 9. INVERTEBRATES

2

PART 1. GENERAL PROVISIONS

3

§ 30600. Provisions not exclusive

4

30600. Animals governed by this division are also governed by other provisions of this code, including but not limited to Division 5 (commencing with Section 5000).

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Comment. Section 30600 is new.

8

§ 30605. Scope of commercial provisions

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30605. The provisions of this division that are expressly identified as commercial provisions apply to the taking and possession of invertebrates for any commercial purpose. Those commercial provisions do not apply to activities governed by **Division 12 (commencing with Section 15000)**.

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Comment. Section 30605 continues the part of former Fish and Game Code Section 7600 applicable to the provisions of this division without substantive change.

15

§ 30610. Take or possession in tidal area

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30610. (a) Except as otherwise expressly permitted in this code, an invertebrate may not be taken, possessed aboard a boat, or landed for a commercial purpose by any person in any tide pool or tidal area, including tide flats or other areas between the high tidemark and 1,000 feet beyond the low tidemark, unless a valid tidal invertebrate permit has been issued to that person that has not been suspended or revoked.

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(b) The taking, possessing, or landing of an invertebrate pursuant to this section shall be subject to regulations adopted by the commission.

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Comment. Section 30610 continues former Fish and Game Code Section 8500 without substantive change.

26

PART 2. ABALONE

27

TITLE 1. ABALONE GENERALLY

28

CHAPTER 1. PRELIMINARY PROVISIONS

29

§ 30650. Mollusk

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30650. For the purposes of Part 9 (commencing with Section 33400), an abalone is a mollusk.

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Comment. Section 30650 is new.

33

Staff Note. Based on staff research, it appears that an abalone is a mollusk. **The staff invites comment on whether that is correct.**

34

1 abalone or abalone meat shall be marked with the abalone's place or country of
2 origin.

3 **Comment.** Section 30750 continues former Fish and Game Code Section 2371 without
4 substantive change.

5 CHAPTER 4. GEOGRAPHIC RESTRICTIONS

6 § 30800. Moratorium on take, possession, or landing

7 30800. (a) A moratorium is imposed on the taking, possessing, or landing of
8 abalone (genus *Haliotis*) for commercial or recreational purposes in ocean waters
9 of the state south of a line drawn due west magnetic from the center of the mouth
10 of the San Francisco Bay, including all islands offshore the mainland of
11 California, including, but not limited to, the Farallon Islands and the Southern
12 California Channel Islands.

13 (b) It is unlawful to take, possess, or land abalone for commercial or recreational
14 purposes in those ocean waters while the moratorium described in subdivision (a)
15 is in effect.

16 **Comment.** Section 30800 continues former Fish and Game Code Section 5521 without
17 substantive change.

18 § 30805. Commercial restriction on take

19 30805. (a) In addition to the moratorium imposed by **Section 5521**, and
20 notwithstanding any other provision of law, it is unlawful to take abalone for
21 commercial purposes in **District 6, 7, 16, 17, or 19A, in District 10** north of Point
22 Lobos, or in **District 20** between Southeast Rock and the extreme westerly end of
23 Santa Catalina Island.

24 (b) For a person who is required to obtain a sport fishing license, the possession
25 of more than 12 individual abalone or abalone in excess of the annual bag limit is
26 prima facie evidence that the person possesses the abalone for commercial
27 purposes.

28 **Comment.** Section 30805 continues former Fish and Game Code Section 5521.5 without
29 substantive change.

30 **Staff Notes.** (1) There is a possible disconnect between subdivisions (a) and (b) of existing
31 Section 5521.5 (which would be continued by proposed Section 30805). Subdivision (a) prohibits
32 the *take* of abalone for commercial purposes in specified locations, whereas subdivision (b)
33 provides that possession of a specified quantity of abalone by specified persons is prima facie
34 evidence that the person *possessed* the abalone for commercial purposes. **Is this discrepancy**
35 **between the conduct constituting the violation specified in subdivision (a), and the conduct**
36 **established by prima facie evidence pursuant to subdivision (b), intended?**

37 (2) Existing Section 5521.5(b) on its face applies only to persons who are required to obtain
38 sport fishing licenses. However, some persons are permitted to engage in sport fishing without a
39 sport fishing license (e.g., a person under the age of 16 years). Is Section 5521.5(b) meant to
40 exclude such persons from the application of the provision, or is it solely meant to exclude
41 commercial fishermen?

42 (3) In a criminal prosecution for unlawful take of abalone under Section 5521.5, the prima

1 facie evidence rule in Section 5521.5(b) (which would be continued by proposed Section
2 30805(b)) could be held unconstitutional, based on authority holding that a presumption in a
3 criminal statute may not relieve the prosecution of its burden of proving each element of a
4 charged offense beyond a reasonable doubt. See *People v. Roder*, 33 Cal. 3d 491, 658 P.2d 1302,
5 189 Cal. Rptr. 501 (1983).

6 On the other hand, application of the prima facie evidence rule might be appropriate in a civil
7 or licensure proceeding based on a violation of Section 5521.5.

8 **The staff is conducting further research on this issue.**

9 **§ 30810. Collection as broodstock by aquaculturist**

10 30810. Notwithstanding **Sections 5521 and 5521.5**, a registered aquaculturist
11 may collect abalone for broodstock, in accordance with **subdivision (b) of Section**
12 **15301**.

13 **Comment.** Section 30810 continues former Fish and Game Code Section 5521.6 without
14 substantive change.

15 CHAPTER 5. PENALTIES

16 **§ 30850. Base punishment for violation**

17 30850. (a) Notwithstanding **Section 12000**, and except as provided in **Section**
18 **12006.6**, the punishment for a violation of any provision of **Section 5521 or**
19 **5521.5**, or any regulation adopted pursuant to either **Section 5521 or 5521.5**, or of
20 **Section 7121** involving abalone, is a fine of not less than fifteen thousand dollars
21 (\$15,000) or more than forty thousand dollars (\$40,000) and imprisonment in the
22 county jail for a period not to exceed one year. The court shall permanently revoke
23 any commercial fishing license, commercial fishing permit, or sport fishing license
24 issued by the department. Any vessel, diving or other fishing gear or apparatus, or
25 vehicle used in the commission of an offense punishable under this section, may
26 be seized and may be ordered forfeited by the court pursuant to **subdivision (c) of**
27 **Section 12157**. Notwithstanding any other provision of law, the commercial
28 license of any person arrested for a violation punishable under this section may not
29 be sold, transferred, loaned, or leased, or used as security for any financial
30 transaction until disposition of the charges is final.

31 (b) Notwithstanding any other provision of law, the money collected from any
32 fine or forfeiture imposed or collected for the taking of abalone for any purpose
33 other than for profit in violation of this article or any other provision of law shall
34 be deposited as follows:

35 (1) One-half in the Abalone Restoration and Preservation Account.

36 (2) One-half in the county treasury of the county in which the violation
37 occurred.

38 **Comment.** Section 30850 continues former Fish and Game Code Section 12009 without
39 substantive change.

40 **Staff Notes.** (1) Existing Fish and Game Code Section 12009 (which would be continued by
41 proposed Section 30850, immediately above) and existing Fish and Game Code Section 12006.6

1 (which would be continued by proposed Section 30855, immediately below) both specify
2 punishment for a violation of either existing Section 5521 or 5521.5. However, the punishment
3 specified under Section 12006.6 is to be imposed only if the violation occurs in a specially
4 described location, and the person committing the violation has engaged in specified excess take.

5 Section 12006.6 provides that punishment under that section shall be imposed “in addition to
6 Section 12009,” suggesting Section 12006.6 is intended to *enhance* (i.e. add to) the punishment
7 provided for under Section 12009. This construction of the two sections is also largely consistent
8 with the punishments specified by the two sections, as the “base” punishment section (Section
9 12009) requires two aspects of punishment that are not part of the specified punishment under
10 Section 12006.6 (jail time, and immediate revocation of any sport fishing license held by the
11 offender).

12 However, the staff still has several questions about the intended interrelationship between the
13 two sections:

14 (1) Both sections provide for imposition of an identical fine – not less than fifteen thousand
15 dollars (\$15,000) or more than forty thousand dollars (\$40,000). If it is correct that Section
16 12006.6 is intended to provide for enhanced punishment beyond that required by Section 12009,
17 does that mean a person sentenced pursuant to Section 12006.6 can receive *double* that specified
18 fine?

19 (2) The punishments called for by the two sections do not make clear which construction of the
20 two sections is intended. For example, both sections provide for exactly the same fine – not less
21 than fifteen thousand dollars (\$15,000) or more than forty thousand dollars (\$40,000). Does this
22 mean that a person sentenced pursuant to Section 12006.6 can receive that same fine *twice*? That
23 result would seem odd, given that Section 12006.6 provides for *no* additional jail time beyond the
24 jail time required by Section 12009.

25 (3) Section 12009(b) provides (with emphasis added) that “[n]otwithstanding *any other*
26 *provision of law*,” the money collected from *any* fine or forfeiture imposed or collected for the
27 taking of abalone for any purpose other than for profit *in violation of this article or any other*
28 *provision of law* shall be deposited as follows:

29 (1) One-half in the Abalone Restoration and Preservation Account.

30 (2) One-half in the county treasury of the county in which the violation occurred.”

31 However, Section 12006.6(d), a “provision of law” described by Section 12009(b), provides
32 that “[n]ot less than 50 percent of the revenue deposited in the Fish and Game Preservation Fund
33 from fines and forfeitures collected pursuant to this section shall be allocated for the support of
34 the Special Operations Unit of the Wildlife Protection Division of the department and used for
35 law enforcement purposes.” It is unclear how these apportionment provisions are intended to be
36 reconciled.

37 **The staff invites comment on all these issues.**

38 **§ 30855. Enhanced punishment for take in closed area**

39 30855. Notwithstanding **Section 12000 or 12002.8**, and in addition to **Section**
40 **12009**, and notwithstanding the type of fishing license or permit held, if any
41 person is convicted of a violation of **Section 5521 or 5521.5**, and the offense
42 occurs in an area closed to the taking of abalone for commercial purposes, and the
43 person takes or possesses more than 12 abalone at one time or takes abalone in
44 excess of the annual bag limit, that person shall be punished by all of the
45 following:

46 (a) A fine of not less than fifteen thousand dollars (\$15,000) or more than forty
47 thousand dollars (\$40,000).

48 (b) The court shall order the department to permanently revoke, and the
49 department shall permanently revoke, the commercial fishing license and any

1 commercial fishing permits of that person. The person punished under this
2 subdivision shall not, thereafter, be eligible for any license or permit to take or
3 possess fish for sport or commercial purposes, including, but not limited to, a
4 commercial fishing license or a sport fishing or sport ocean fishing license.
5 Notwithstanding any other provision of law, the commercial license or permit of a
6 person arrested for a violation punishable under this section may not be sold,
7 transferred, loaned, leased, or used as security for any financial transaction until
8 disposition of the charges is final.

9 (c) Any vessel, diving or other fishing gear or apparatus, or vehicle used in the
10 commission of an offense punishable under this section shall be seized, and shall
11 be ordered forfeited in the same manner prescribed for nets or traps used in
12 violation of this code, as described in **Article 3 (commencing with Section 8630)**
13 **of Chapter 3 of Part 3 of Division 6**, or in the manner prescribed in **Section**
14 **12157**.

15 (d) Not less than 50 percent of the revenue deposited in the Fish and Game
16 Preservation Fund from fines and forfeitures collected pursuant to this section
17 shall be allocated for the support of the Special Operations Unit of the Wildlife
18 Protection Division of the department and used for law enforcement purposes.

19 **Comment.** Section 30855 continues former Fish and Game Code Section 12006.6 without
20 substantive change.

21 **§ 30860. Unlawful sale or purchase**

22 30860. (a) Notwithstanding any other provision of law, a violation of **Section**
23 **7121** for the sale or purchase of abalone taken by a person required to be licensed
24 pursuant to **Section 7145** is punishable by a fine of not less than fifteen thousand
25 dollars (\$15,000) or more than forty thousand dollars (\$40,000).

26 (b) If the violation in question involved a person who knowingly purchased or
27 received, for commercial purposes, abalone taken by a person required to be
28 licensed pursuant to **Section 7145**, the violation is punishable by a fine of not less
29 than seven thousand five hundred dollars (\$7,500) or more than fifteen thousand
30 dollars (\$15,000).

31 **Comment.** Section 30860 continues the part of former Fish and Game Code Section 12022.3
32 applicable to abalone without substantive change.

33 **§ 30865. Suspension of license or permit based on pending criminal charge**

34 30865. (a) When a complaint has been filed in a court of competent jurisdiction
35 charging a person with a violation that may result in suspension or revocation of
36 any license or permit to take abalone for a commercial purpose, and no disposition
37 of the complaint has occurred within 90 days after it has been filed in the court,
38 the department may suspend the license or permit of that person.

39 (b) Whenever the department proposes to suspend a license or permit under this
40 section, notice and an opportunity to be heard shall be given to the licensee or
41 permittee, before taking the action. The notice shall contain a statement setting

1 forth the proposed action and the grounds for the action, and notify the licensee or
2 permittee of his or her right to a hearing as provided in this section. Within 10
3 days after the receipt of the notice from the department, the licensee or permittee
4 may request a hearing. The hearing shall be held by the commission at the next
5 regularly scheduled hearing of the commission held more than 30 days after the
6 notice of intent to suspend the license or permit was sent. The licensee or
7 permittee shall be given 10 days' notice of the time and place of the hearing.

8 (c) A decision shall be made within a reasonable time on whether the license or
9 permit shall be suspended until the disposition of the complaint by the court. In
10 determining whether to order the suspension, the commission shall consider
11 whether or not the violation could have a detrimental effect on the resources and
12 whether or not a suspension is in the best public interest, and shall find whether
13 there is sufficient evidence that a violation has occurred. A failure to make a
14 finding that there is sufficient evidence that a violation has occurred, or a finding
15 there is insufficient evidence, shall terminate the proceedings under this section.

16 (d) If the person is acquitted of the charges in the complaint, or the charges are
17 dismissed, any suspension under this section is thereby terminated.

18 (e) No complaint shall be filed in a court charging a commercial abalone
19 violation unless evidence supporting the charge has been reviewed by the
20 appropriate county or city prosecuting agency, and a criminal complaint has been
21 issued by that agency.

22 **Comment.** Section 30865 continues former Fish and Game Code Section 12022.10 without
23 substantive change.

24 **§ 30870. Revocation of license or permit upon conviction**

25 30870. (a) The court shall order the department to permanently revoke, and the
26 department shall permanently revoke, the commercial fishing license and any
27 commercial fishing permit of any person convicted of either of the following:

28 (1) Taking or possessing abalone out of season.

29 (2) Taking or possessing abalone taken illegally from any area north of Point
30 Sur.

31 (b) The court shall order the department to permanently revoke, and the
32 department shall permanently revoke, the commercial fishing license and any
33 commercial fishing permit of any person convicted of either of the following
34 offenses, if the person possessed more than 12 abalone at the time of the offense:

35 (1) Removing abalone from the shell, or possessing abalone illegally removed
36 from the shell.

37 (2) Taking or possessing abalone that are less than the minimum size.

38 (c) Any person whose license or permit is revoked pursuant to subdivision (a) or
39 (b) shall not thereafter be eligible for any license or permit to take or possess fish
40 for a sport or commercial purpose.

41 **Comment.** Section 30870 continues former Fish and Game Code Section 12022.8(a)-(c)
42 without substantive change.

1 **§ 30875. Forfeiture of device or apparatus used**

2 30875. For conviction of a violation of an offense that involves the sale,
3 purchase, or possession of abalone for a commercial purpose, the court may order
4 forfeiture of any device or apparatus that is used in committing the offense,
5 including, but not limited to, any vehicle used or intended for use in committing
6 the offense.

7 **Comment.** Section 30875 continues former Fish and Game Code Section 12157(c)(1)(B)
8 without substantive change.

9 CHAPTER 6. RECREATIONAL ABALONE MANAGEMENT PROGRAM

10 **§ 30950. “Program”**

11 30950. For the purposes of this chapter, the following terms have the following
12 meanings:

13 (a) “Program” means the Recreational Abalone Management Program.

14 (b) “Research” includes, but is not limited to, investigation, experimentation,
15 monitoring, and analysis.

16 (c) “Management” means establishing and maintaining an optimal sustainable
17 utilization.

18 **Comment.** Subdivision (a) of Section 30950 continues the third sentence of former Fish and
19 Game Code Section 7149.9(a) without change.

20 Subdivisions (b) and (c) continue the second sentence of former Fish and Game Code Section
21 7149.9(a)(1) without substantive change.

22 **§ 30955. Use of fees**

23 30955. (a) Fees received by the department pursuant to **Section 7149.8** shall be
24 deposited in the Abalone Restoration and Preservation Account within the Fish
25 and Game Preservation Fund, which is hereby created. Notwithstanding Section
26 13340 of the Government Code, the moneys in the account are continuously
27 appropriated, without regard to fiscal year, to the department to be used only for
28 the Recreational Abalone Management Program.

29 (b) At least 15 percent of the funds deposited in the account shall be used for
30 program activities south of San Francisco. To the extent possible, participants in
31 the management activities of the program in that area shall be former commercial
32 abalone divers.

33 (c) The department shall maintain internal accounts that ensure that the fees
34 received pursuant to **Section 7149.8** are disbursed for the purposes of subdivision
35 (a). Not more than 20 percent of the fees received pursuant to **Section 7149.8** shall
36 be used for administration by the department.

37 (d) Unencumbered fees collected pursuant to **Section 7149.8** during any
38 previous calendar year may be expended for the purposes of subdivisions (a) and
39 (b). All interest and other earnings on the fees received pursuant to **Section 7149.8**

1 shall be deposited in the account and shall be used for the purposes of subdivisions
2 (a) and (b).

3 **Comment.** Subdivision (a) of Section 30955 continues the first two sentences of former Fish
4 and Game Code Section 7149.9(a) without substantive change.

5 Subdivisions (b) through (d) continue former Fish and Game Code Section 7149.9(b)-(d)
6 without substantive change.

7 **§ 30960. Program elements**

8 30960. The program shall include the following elements:

9 (a) Research and management of abalone and abalone habitat.

10 (b) Supplementary funding of allocations for the enforcement of statutes and
11 regulations applicable to abalone, including, but not limited to, the acquisition of
12 special equipment and the production and dissemination of printed materials, such
13 as pamphlets, booklets, and posters, aimed at compliance with recreational
14 abalone regulations.

15 (c) Direction for volunteer groups relating to abalone and abalone habitat
16 management, presentations of abalone related matters at scientific conferences and
17 educational institutions, and publication of abalone related material.

18 **Comment.** Section 30960 continues the first sentence of former Fish and Game Code Section
19 7149.9(a)(1), and former Fish and Game Code Section 7149.9(a)(2) and (3), without substantive
20 change.

21 **CHAPTER 7. ABALONE RECOVERY AND MANAGEMENT PLAN**

22 **§ 31000. Declaration of legislative intent**

23 31000. It is the intent of the Legislature that the commission undertake
24 management of abalone in a manner consistent with the abalone recovery and
25 management plan submitted pursuant to **Section 5522**.

26 **Comment.** Section 31000 continues former Fish and Game Code Section 5520 without
27 substantive change.

28 **§ 31005. Elements of plan**

29 31005. (a) On or before January 1, 2003, the department shall submit to the
30 commission a comprehensive abalone recovery and management plan. The plan
31 shall contain all of the following:

32 (1) An explanation of the scientific knowledge regarding the biology, habitat
33 requirements, and threats to abalone.

34 (2) A summary of the interim and long-term recovery goals, including a range of
35 alternative interim and long-term conservation and management goals and
36 activities. The department shall report why it prefers the recommended activities.

37 (3) Alternatives for allocating harvest between sport and commercial divers if
38 the allocation of the abalone harvest is warranted.

39 (4) An estimate of the time and costs required to meet the interim and long-term
40 recovery goals for the species, including available or anticipated funding sources,

1 and an initial projection of the time and costs associated with meeting the final
2 recovery goals. An implementation schedule shall also be included.

3 (5) An estimate of the time necessary to meet the interim recovery goals and
4 triggers for review and amendment of strategy.

5 (6) A description of objective measurable criteria by which to determine
6 whether the goals and objectives of the recovery strategy are being met and
7 procedures for recognition of successful recovery. These criteria and procedures
8 shall include, but not be limited to, the following:

9 (A) Specified abundance and size frequency distribution criteria for former
10 abalone beds within suitable habitat not dominated by sea otters.

11 (B) Size frequency distributions exhibiting multiple size classes as necessary to
12 ensure continued recruitment into fishable stock.

13 (C) The reproductive importance to the entire ecosystem of those areas proposed
14 for reopening to harvest and the potential impact of each reopening on the
15 recovery of abalone population in adjacent areas.

16 (b) Where appropriate, the recovery and management plan may include the
17 following:

18 (1) A network of no-take abalone reserves.

19 (2) A total allowable catch, reflecting the long-term yield each species is capable
20 of sustaining, using the best available science and bearing in mind the ecological
21 importance of the species and the variability of marine ecosystems.

22 (3) A permanent reduction in harvest.

23 **Comment.** Section 31005 continues former Fish and Game Code Section 5522(a) and (b)
24 without change.

25 **§ 31010. Funding of plan**

26 31010. Funding to prepare the recovery and management plan described in
27 Section 31005 and any planning and scoping meetings shall be derived from the
28 fees collected for the abalone stamp.

29 **Comment.** Section 31010 continues former Fish and Game Code Section 5522(c) without
30 substantive change.

31 **§ 31015. Action following adoption of plan**

32 31015. (a) On or before January 1, 2008, and following the adoption of the
33 recovery and management plan by the commission, the department may apply to
34 the commission to reopen sport or commercial fishing in all or any portion of the
35 waters described in **Section 5521**.

36 (b) If the commission makes a finding that the resource can support additional
37 harvest activities and that these activities are consistent with the abalone recovery
38 plan, all or a portion of the waters described in **Section 5521** may be reopened and
39 management measures prescribed and implemented, as appropriate.

1 (c) The commission may close or, where appropriate, may establish no-take
2 marine refuges in any area opened pursuant to this section if it makes a finding
3 that this action is necessary to comply with the abalone management plan.

4 **Comment.** Section 31015 continues former Fish and Game Code Section 5522(d) without
5 substantive change.

6 **§ 31020. Priority for previous commercial permittees**

7 31020. If the commission determines that commercial fishing is an appropriate
8 management measure, priority for participation in the fishery shall be given to
9 those persons who held a commercial abalone permit during the 1996–97 permit
10 year.

11 **Comment.** Section 31020 continues former Fish and Game Code Section 5522(e) without
12 change.

13 **CHAPTER 8. RECREATIONAL ABALONE ADVISORY COMMITTEE**

14 **§ 31050. Committee requirements**

15 31050. (a) The director shall appoint a Recreational Abalone Advisory
16 Committee, consisting of nine members who shall serve without compensation.
17 The members of the committee shall be selected as follows:

18 (1) Six members who are not officers or employees of the department. The six
19 members shall be residents of California, and meet the following requirements:

20 (A) Two members shall reside north of the southern boundary line of Marin
21 County and a line extending due east from the easternmost point of Marin County
22 located in San Pablo Bay. The two members shall be selected from nominations
23 submitted by the Northern California Shellfish Assessment Program or by
24 individuals or organizations that actively participate in the recreational abalone
25 fishery, except that not more than one of the members selected shall be an active
26 or former commercial abalone diver or involved in commercial seafood processing
27 or marketing.

28 (B) Two members shall reside south of the southern boundary line of Marin
29 County and a line extending due east from the easternmost point of Marin County
30 located in San Pablo Bay, and north of the boundary between Santa Barbara and
31 San Luis Obispo Counties and a line extending due east from the easternmost
32 point in that boundary line. The two members shall be selected from nominations
33 submitted by the Central California Council of Divers, the Southern California
34 Shellfish Assessment Program, the Northern California Shellfish Assessment
35 Program, or by individuals or organizations that actively participate in the
36 recreational abalone fishery, except that not more than one of the members
37 selected shall be an active or former commercial abalone diver or involved in
38 commercial seafood processing or marketing.

39 (C) Two members shall reside south of the boundary between Santa Barbara and
40 San Luis Obispo Counties and a line extending due east from the easternmost

1 point in that boundary line. The two members shall be selected from nominations
2 submitted by the Greater Los Angeles Council of Divers, the San Diego Council
3 of Divers, the Channel Islands Council of Divers, the Southern California
4 Shellfish Assessment Program, or by individuals or organizations that actively
5 participate in the recreational abalone fishery, except that not more than one of the
6 members selected shall be an active or former commercial abalone diver or
7 involved in commercial seafood processing or marketing.

8 (2) One member shall represent the department in enforcement activities and
9 shall be selected from personnel in the Wildlife Protection Division.

10 (3) Two members shall be marine scientists who are or have been involved in
11 abalone research at universities, state universities, or in state or federal programs.
12 Not more than one of the persons shall be an officer or employee of the
13 department.

14 (b) No member shall be involved in or profit from the culture for sale
15 (commercial aquaculture) of abalone.

16 (c) The advisory committee shall meet at least once each calendar year to review
17 proposals, and recommend projects and budgets to the director for the expenditure
18 of fees received pursuant to **Section 7149.8**. The committee may review progress
19 reports and the results of projects funded under this section, and make
20 recommendations to the director regarding abalone resource management.

21 **Comment.** Section 31050 continues former Fish and Game Code Section 7400 without
22 substantive change.

23 CHAPTER 9. ABALONE RESOURCES RESTORATION AND
24 ENHANCEMENT PROGRAM

25 **§ 31100. Funding of program**

26 31100. (a) Any landing tax collected pursuant to former Fish and Game Code
27 Section 8051.3 shall be deposited in the Fish and Game Preservation Fund, and
28 shall be used only for the Abalone Resources Restoration and Enhancement
29 Program.

30 (b) The department shall maintain internal accounts necessary to ensure that the
31 funds are disbursed for the purposes in this section.

32 (c) The department may use for administration no more of the landing tax
33 collected pursuant to former Fish and Game Code Section 8051.3 than an amount
34 equal to the regularly approved department indirect overhead rate.

35 (d) Any interest on the revenues from the landing tax collected pursuant to
36 former Fish and Game Code Section 8051.3 shall be deposited in the fund, and
37 used for the purposes in this subdivision.

38 (e) This section applies to the taking and possession of abalone for any
39 commercial purpose.

40 (f) This section does not apply to activities governed by **Division 12**
41 **(commencing with Section 15000)**.

1 **Comment.** Subdivisions (a) through (d) of Section 31100 continue former Fish and Game
2 Code Section 8051.4(a) without substantive change.

3 Subdivisions (e) and (f) continue the part of former Fish and Game Code Section 7600
4 applicable to former Fish and Game Code Section 8051.4(a) without substantive change.

5 **TITLE 2. COMMERCIAL PROVISIONS [RESERVED]**

6 **PART 3. CLAMS**

7 **TITLE 1. CLAMS GENERALLY**

8 **CHAPTER 1. PRELIMINARY PROVISIONS**

9 **§ 31200. Mollusk**

10 31200. For the purposes of Part 9 (commencing with Section 33000), a clam is a
11 mollusk.

12 **Comment.** Section 31200 is new.

13 ☞ **Staff Note.** Based on staff research, it appears that a clam is a mollusk. **The staff invites**
14 **comment on whether that is correct.**

15 **§ 31205. Provisions not exclusive**

16 31205. The provisions of this part are not intended to be exclusive. Other
17 provisions that govern clams include, but are not limited to, the following
18 provisions:

19 (a) **Section 8597.**

20 (b) **Section 9050.**

21 (c) **Section 10500.**

22 (d) **Section 10711.**

23 (e) **Section 15005.**

24 (f) **Section 15401.**

25 **Comment.** Section 31205 is new.

26 **CHAPTER 2. PISMO CLAMS**

27 **§ 31250. Possession**

28 31250. No pismo clam not in the shell may be possessed, except when it is being
29 prepared for immediate consumption.

30 **Comment.** Section 31250 continues former Fish and Game Code Section 7290 without
31 change.

32 **§ 31255. Shipping**

33 31255. No pismo clam taken in this state may be shipped.

1 **Comment.** Section 31255 continues former Fish and Game Code Section 2368 without
2 substantive change.

3 **§ 31260. Importing**

4 31260. (a) Pismo clams taken outside this state may be imported into this state
5 when accompanied by a United States customhouse entry certificate showing their
6 place of origin, and a certificate or clearance from the responsible governmental
7 agency to the effect that such shipment was made in compliance with the laws and
8 regulations of the place or country of origin.

9 (b) Pismo clams authorized for importation pursuant to subdivision (a) may be
10 canned and shipped outside this state.

11 (c) The commission may prescribe regulations governing the inspection and
12 marking of pismo clams imported into this state. The cost of such inspection and
13 marking shall be paid by the importer of the pismo clams.

14 **Comment.** Section 31260 continues former Fish and Game Code Section 2369 without
15 substantive change.

16 CHAPTER 3. MISCELLANEOUS PROVISIONS

17 **§ 31300. Digging instruments**

18 31300. No instrument capable of being used to dig clams may be possessed
19 between one-half hour after sunset and one-half hour before sunrise, on any beach
20 of this state, except tools and implements used in the work of cleaning, repairing,
21 or maintaining a beach, when possessed by a person authorized by appropriate
22 authority to perform that work.

23 **Comment.** Section 31300 continues former Fish and Game Code Section 7332 without
24 substantive change.

25 TITLE 2. COMMERCIAL PROVISIONS

26 CHAPTER 1. PRELIMINARY PROVISIONS

27 **§ 31350. Application of title**

28 31350. For purposes of **Section 7600**, the provisions in this title are commercial
29 provisions.

30 **Comment.** Section 31350 is new. It is added for drafting convenience.

31 CHAPTER 2. TAKE

32 **§ 31400. When take permitted**

33 31400. Except as otherwise provided in this chapter, in **Districts 8, 9, and 17**,
34 clams may be taken between September 1 and April 30, and in other districts
35 clams may be taken at any time.

1 **Comment.** Section 31400 continues former Fish and Game Code Section 8340 without
2 substantive change.

3 **§ 31405. Commission regulation of take of freshwater claims for commercial purpose**

4 31405. Notwithstanding **Section 200**, the commission shall regulate the taking
5 of freshwater claims for commercial purposes.

6 **Comment.** Section 31405 continues former Fish and Game Code Section 8475 without
7 substantive change.

8  **Staff Note.** Existing Fish and Game Code Section 8475 (which would be continued by
9 proposed Section 31405), is located in an article of the existing code entitled “Fresh-water Fish
10 for Bait.”

11 **The staff invites comment on whether this section is intended to apply only to taking of**
12 **freshwater claims for use as bait.**

13 **§ 31410. Littlenecks, chiones and hard-shell cockles**

14 31410. (a) All species of clams commonly known as littlenecks, chiones and
15 hard-shell cockles, including thin-shelled littleneck, common littleneck, Japanese
16 littleneck, rough-sided littleneck, smooth chione, wavy chione, and banded chione,
17 may be taken at any time, except in the waters of Marin County, where they may
18 be taken only between September 1 and March 31.

19 (b) Notwithstanding subdivision (a), a clam listed in subdivision (a) that
20 measures less than one and one-half inches in greatest diameter may not be taken,
21 possessed, transported, or sold at any time.

22 (c) The bag limit on clams listed in subdivision (a) is 50 per day, in the
23 aggregate. Not more than one daily bag limit of clams listed in subdivision (a)
24 may be possessed by any person during one day.

25 (d) Notwithstanding any other provision of this section, a clam listed in
26 subdivision (a), when legally taken outside the state and brought within the state
27 pursuant to this code, may be possessed, transported, and sold without restrictions,
28 except that any shipment of clams listed in subdivision (a) into this state shall be
29 accompanied by a bill of lading, or invoice, showing the species, total number or
30 weight, and the origin of the clams.

31 **Comment.** Section 31410 continues former Fish and Game Code Section 8341 without
32 substantive change.

33 **§ 31415. Northern razor clams**

34 31415. Northern razor clams (*Siliqua patula*) may not be sold, except that
35 Northern razor clams taken outside the state and brought within the state may be
36 possessed, transported, and sold, without restriction.

37 **Comment.** Section 31415 continues former Fish and Game Code Section 8343 without
38 substantive change.

- 1 (f) **Section 9012.**
- 2 (g) **Section 9050.**
- 3 **Comment.** Section 31505 is new.

4 CHAPTER 2. IMPORTATION

5 § **31550. Importation of crab meat**

6 31550. Crab meat from outside the state may be imported into the state under
7 regulations of the commission.

8 **Comment.** Section 31550 continues former Fish and Game Code Section 2364 without
9 substantive change.

10 TITLE 2. COMMERCIAL PROVISIONS

11 CHAPTER 1. PRELIMINARY PROVISIONS

12 § **31600. Application of title**

13 31600. For purposes of **Section 7600**, the provisions in this title are commercial
14 provisions.

15 **Comment.** Section 31600 is new. It is added for drafting convenience.

16 § **31655. Definitions**

17 31655. Unless the provision or context otherwise requires, the definitions in this
18 section govern the construction of this title.

19 (a) “Dungeness crab” or “market crab” means crab of the species *Cancer*
20 *magister*.

21 (b) “Reconstruction” means major work on the hull of a vessel to make that
22 vessel operable in the California crab fishery if that work may reasonably be
23 expected to be of a duration that will preclude operation of that vessel in the crab
24 fishery for the length of the crab season or longer.

25 (c) “Rock crab” means any crab of the genus *Cancer* other than Dungeness crab
26 and includes rock crab (*Cancer antennarius*), red crab (*Cancer productus*), and
27 yellow crab (*Cancer anthonyi*).

28 (d) “Under construction” means having plans and materials and proceeding with
29 work toward the completion of an operational Dungeness crab fishing vessel.

30 **Comment.** Section 31655 continues former Fish and Game Code Section 8275 without
31 substantive change.

32 CHAPTER 2. TAKE AND POSSESSION

33 § **31700. Use of trawl or drag net**

34 31700. (a) It is unlawful to take or possess more than 500 pounds of crabs on

1 any boat on which any type of trawl or drag net is carried or operated.

2 **Comment.** Section 31700 continues former Fish and Game Code Section 8834 without
3 substantive change.

4 **§ 31705. Concurrent take for commercial and sport purposes**

5 31705. No vessel may be used to take and land crab for both commercial and
6 sport purposes in the same day.

7 **Comment.** Section 31705 continues former Fish and Game Code Section 9012(a) without
8 change.

9 **§ 31710. Restrictions on eligibility to take crab**

10 31710. (a) Eligibility to take crab in waters of the state and offshore for
11 commercial purposes may be subject to restrictions, including, but not limited to,
12 restrictions on the number of traps utilized by that person, if either of the
13 following occurs:

14 (1) A person holds a California Dungeness crab permit with California landings
15 of less than 5,000 pounds between November 15, 2003, and July 15, 2008,
16 inclusive, as reported in California landings receipts.

17 (2) A person has purchased a Dungeness crab permit on or after July 15, 2008,
18 from a permitholder whose California landings were less than 5,000 pounds
19 between November 15, 2003, and July 15, 2008, inclusive, as reported in
20 California landings receipts.

21 (b) This section shall become inoperative on April 1, 2019, and, as of January 1,
22 2020, is repealed, unless a later enacted statute that becomes operative on or
23 before January 1, 2020, deletes or extends the date on which this section becomes
24 inoperative or is repealed.

25 **Comment.** Subdivision (a) of Section 31710 continues former Fish and Game Code Section
26 8276.4(g) without substantive change.

27 Subdivision (b) continues the part of former Fish and Game Code Section 8276.4(h) applicable
28 to former Fish and Game Code Section 8276.4(g) without substantive change.

29 **§ 31715. Crab meat and frozen crab**

30 31715. Crab meat and frozen crab taken during the open season may be
31 possessed, transported, and sold at any time, subject to the regulations of the
32 commission. The cost of inspection and marking, under the regulations of the
33 commission, shall be paid by the owner or seller of the crab or crab meat.

34 **Comment.** Section 31715 continues former Fish and Game Code Section 8281 without
35 substantive change.

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CHAPTER 3. DUNGENESS CRAB

Article 1. General Provisions

§ 31750. Provisions not exclusive

31750. The provisions of this part are not intended to be exclusive. Other provisions that govern Dungeness crab include, but are not limited to, the following provisions:

- (a) Section **6903.5**.
- (b) Section **8598**.
- (c) Section **9001**.
- (d) Section **9006**.
- (e) Section **9011**.

Comment. Section 31750 is new.

§ 31755. Prohibited sale of take from specified waters

31755. It is unlawful to sell any Dungeness crab taken in any of the following waters:

- (a) The Eel River and its tributaries, between the Pacific Ocean and the west line of Sec. 35, T. 3 N., R. 1 W., H. B. & M.
- (b) The Pacific Ocean, within a radius of one mile from the mouth of the Eel River.
- (c) Humboldt Bay, including the entrance of that bay, and the Pacific Ocean within a radius of one mile from the extreme western point of the north jetty at the entrance of the bay, and for a radius of one mile from the extreme western point of the south jetty at the entrance of the bay.
- (d) Trinidad Bay, the body of water within the area enclosed by a line running southeasterly from the westernmost point of Trinidad Head to the mouth of Luftenholtz Creek.
- (e) Bodega Lagoon.

Comment. Section 31755 continues former Fish and Game Code Section 8279 without substantive change.

§ 31760. Take in Crescent City Harbor area

31760. Except as provided in **Section 8276.2**, Dungeness crab may not be taken for commercial purposes in any district, or part of a district, lying within the portions of Crescent City Harbor between the south sand barrier and the breakwater.

Comment. Section 31760 continues former Fish and Game Code Section 8276(c) without substantive change.

§ 31765. Use of trawl or drag net south of Point Reyes

31765. It is unlawful for any person on a vessel on which any type of trawl or

1 drag net is carried or operated to take or possess Dungeness crab, or to transfer
2 Dungeness crab to another vessel, south of a line extending due west, true, from
3 Point Reyes.

4 **Comment.** Section 31765 continues former Fish and Game Code Section 8834.5 without
5 substantive change.

6 **§ 31770. Size and sex restrictions**

7 31770. (a) Except as otherwise provided, it is unlawful to take, possess, buy, or
8 sell a male Dungeness crab of less than six and one-quarter (6 1/4) inches in
9 breadth, or a female Dungeness crab of any breadth.

10 (b) In any load or lot of Dungeness crabs, one percent or less in number may be
11 less than six and one-quarter (6 1/4) inches and equal to or greater than five and
12 three-quarters (5 3/4) inches in breadth.

13 (c) The breadth of a Dungeness crab shall be measured by the shortest distance
14 through the body from edge of shell to edge of shell directly from front of points
15 (lateral spines).

16 **Comment.** Section 31770 continues former Fish and Game Code Section 8278 without
17 substantive change.

18 **Staff Note.** Existing Fish and Game Code Section 8278 (which would be continued by
19 proposed Section 31770) generally prohibits the take, possession, purchase, or sale, of undersized
20 male Dungeness crabs, or female Dungeness crabs of any size, “except that not more than 1
21 percent in number of any load or lot of Dungeness crabs may be less than six and one-quarter (6
22 1/4) inches in breadth but not less than five and three-quarters (5 3/4) inches in breadth.”

23 **Is this exception intended to include female Dungeness crabs of the specified breadth?**

24 **Article 2. Geographic Restrictions**

25 **§ 31850. Delayed opening season in Districts 6, 7, 8 and 9**

26 31850. (a) If there is any delay ordered by the director in the opening of the
27 Dungeness crab fishery in **Districts 6, 7, 8, and 9** pursuant to Article 4
28 (commencing with Section 31950), a vessel shall not take or land crab within
29 those districts during any closure.

30 (b) If there is any delay in the opening of the Dungeness crab season pursuant to
31 Article 4 (commencing with Section 31950), the opening of the season in those
32 districts shall be preceded by a 64-hour gear setting period, as ordered by the
33 director.

34 **Comment.** Section 31850 continues former Fish and Game Code Section 8276.3(a) and (b)
35 without substantive change.

36 **Staff Note.** The staff invites comment on whether the prohibition in existing Fish and
37 Game Code Section 8276.3(a) (which would be continued by Section 31850(a)) and the
38 requirement in Section 8276.3(b) (which would be continued by Section 31850(b)) are
39 limited in their application to only the Dungeness crab fishery, or are intended to apply to
40 the take of any crab in Districts 6, 7, 8, or 9.

1 **§ 31855. Ocean waters**

2 31855. (a) A person shall not take, possess onboard, or land Dungeness crab for
3 commercial purposes from any vessel in ocean waters in **District 6, 7, 8, or 9** for
4 30 days after the opening of the Dungeness crab fishing season in California, if
5 both of the following events have occurred:

6 (1) The opening of the season has been delayed pursuant to state law in
7 California.

8 (2) The person has taken, possessed onboard, or landed Dungeness crab for
9 commercial purposes, from ocean waters outside of **District 6, 7, 8, or 9**, prior to
10 the opening of the season in those districts.

11 (b) A person shall not take, possess onboard, or land Dungeness crab for
12 commercial purposes from any vessel in ocean waters south of the border between
13 Oregon and California for 30 days after the opening of the Dungeness crab fishing
14 season in California, if both of the following events have occurred:

15 (1) The opening of the season has been delayed pursuant to state law in
16 California.

17 (2) The person has taken, possessed onboard, or landed Dungeness crab for
18 commercial purposes in Oregon or Washington prior to the opening of the season
19 in California.

20 (c) A person shall not take, possess onboard, or land Dungeness crab for
21 commercial purposes from any vessel in ocean waters north of the border between
22 Oregon and California for 30 days after the opening of the Dungeness crab fishing
23 season in Oregon or Washington, if both of the following events have occurred:

24 (1) The opening of the season has been delayed in Oregon or Washington.

25 (2) The person has taken, possessed onboard, or landed Dungeness crab for
26 commercial purposes in California prior to the opening of the season in ocean
27 waters off Oregon or Washington.

28 (d) A person shall not take, possess onboard, or land Dungeness crab for
29 commercial purposes from any vessel in ocean waters off Washington, Oregon, or
30 California for 30 days after the opening of the Dungeness crab fishing season in
31 California, Oregon, or Washington, if both of the following events have occurred:

32 (1) The opening of the season has been delayed in Washington, Oregon, or
33 California.

34 (2) The person has taken, possessed onboard, or landed Dungeness crab for
35 commercial purposes in either of the two other states prior to the delayed opening
36 in the ocean waters off any one of the three states.

37 (e) Notwithstanding **Section 12000**, a violation of this section does not
38 constitute a misdemeanor. Pursuant to **Section 7857**, the commission shall revoke
39 the Dungeness crab vessel permit held by any person who violates this section.

40 **Comment.** Section 31855 continues former Fish and Game Code Section 8279.1(a)-(e)
41 without substantive change.

1  **Staff Note.** Existing Fish and Game Code Section 8279.1(e) (which would be continued by
2 Section 31855(e)) provides that a violation of the section “does not constitute a misdemeanor.”
3 **Is this provision intended to provide that a violation of the section is not a crime at all?**

4 **§ 31860. Inoperative date of article**

5 31860. This article shall become inoperative on April 1, 2019, and, as of
6 January 1, 2020, is repealed, unless a later enacted statute that becomes operative
7 on or before January 1, 2020, deletes or extends the date on which this article
8 becomes inoperative or is repealed.

9 **Comment.** Section 31860 combines and continues former Fish and Game Code Sections
10 8276.3(c) and 8279.1(f) without substantive change.

11 Article 3. Seasons Generally

12 **§ 31900. Seasons**

13 31900. Except as provided in **Section 8276.2:**

14 (a) Dungeness crab may be taken for commercial purposes in **Districts 6, 7, 8,**
15 **and 9** only between December 1 and July 15.

16 (b) Dungeness crab may be taken for commercial purposes in all other districts
17 only between November 15 and June 30.

18 **Comment.** Section 31900 continues former Fish and Game Code Section 8276(a) and (b)
19 without substantive change.

20 **§ 31905. Extension of season**

21 31905. (a) The director may extend the Dungeness crab season in any district or
22 part of a district, as provided in this section.

23 (b) Before extending a Dungeness crab season, the director shall consider
24 written findings of the department regarding the state of the Dungeness crab
25 resource in the district, or part of a district, which consider, but are not limited to,
26 population and maturity. The director may extend the season only if the written
27 findings do not conclude that the extension will damage the Dungeness crab
28 resource.

29 (c) The director shall not extend the Dungeness crab season past August 31 in a
30 district, or part thereof, north of the southern boundary of Mendocino County or
31 past July 31 in a district, or part of a district, south of Mendocino County. The
32 director shall order closure of the season at any time during the extension period if
33 the director determines that further fishing will damage the Dungeness crab
34 resource.

35 **Comment.** Section 31905 continues former Fish and Game Code Section 8277 without
36 substantive change.

Article 4. Delayed Opening Seasons

§ 31950. Authority of director to order delay

31950. (a) In **Districts 6, 7, 8, and 9**, the director may order a delay in the opening of the Dungeness crab fishery beyond December 1 in any year, pursuant to this article.

(b) The opening shall not be delayed beyond January 15 of any year.

Comment. Section 31950 continues former Fish and Game Code Section 8276.2(a) without substantive change.

Staff Note. Existing Fish and Game Code Section 8276.2(a) (which would be continued by proposed Section 31950) authorizes the director to delay the opening of the Dungeness crab fishery in Districts 6, 7, 8, and 9 beyond December 1 of any year. Although the authority is contained in the first subdivision of a section that is otherwise about quality testing, Section 8276.2(a) does not expressly limit the director’s authority to delay the opening based on the results of that testing.

Nevertheless, it is the staff’s understanding that limitation on the director’s authority is implied, and proposed Section 31950 would make that limitation express.

The staff invites comment on whether the director’s authority under existing Section 8276.2 is so limited.

§ 31955. Authority of director to order quality testing

31955. (a) On or about November 1 of each year, the director may authorize one or more operators of commercial fishing vessels to take and land a limited number of Dungeness crab, for the purpose of quality testing pursuant to a testing program conducted by, or on behalf of, the Pacific States Marine Fisheries Commission, or by an entity approved by the department.

(b) The entity authorized to conduct the approved testing program may test, or cause to be tested, crabs taken for quality and soft shells pursuant to the approved testing program.

Comment. Subdivision (a) of Section 31955 continues former Fish and Game Code Section 8276.2(b)(1) without substantive change.

Subdivision (b) continues the second sentence of former Fish and Game Code Section 8276.2(c) without substantive change.

§ 31960. Testing guidelines

31960. For purposes of the testing program, the department shall develop guidelines after consulting with representatives of the California Dungeness crab industry, which shall include California delegates to the Tri-State Dungeness Crab Commission, members of the California Dungeness Crab Task Force, or both. The guidelines shall include the following:

(a) Suggested guidelines for the management of the funds received from, but not limited to, the sale of the crab meat pursuant to Section 31970, including the suggested guideline that funds in excess of the program costs may be donated for charitable purposes.

(b) Guidelines for the testing program.

1 (c) Guidelines that establish measures to track crab caught for purposes of the
2 testing program, including, but not limited to, the guideline that all crab caught
3 and sold for the testing program shall be canned.

4 **Comment.** Section 31960 continues former Fish and Game Code Section 8276.2(b)(2)(B)
5 without substantive change.

6 **§ 31965. Delay in season opening in Districts 6, 7, 8, and 9 based on testing**

7 31965. (a) If the quality testing authorized in Section 31955 is performed and
8 indicates the Dungeness crabs are not soft-shelled or of low quality, the director
9 shall order that the Dungeness crab season in Districts 6, 7, 8, and 9 open on
10 December 1.

11 (b) If the quality testing authorized in Section 31955 is performed and results in
12 a finding that Dungeness crabs are soft-shelled or of low quality, the director shall
13 authorize a second test to be conducted on or about November 15, pursuant to the
14 approved testing program.

15 (c) If the second test results in a finding that Dungeness crabs are soft-shelled or
16 of low quality, the director may order the opening of the Dungeness crab season in
17 **Districts 6, 7, 8, and 9** delayed for a period of 15 days, and may authorize a third
18 test to be conducted on or about December 1.

19 (d) If a third test results in a finding that Dungeness crabs are soft-shelled or of
20 low quality, the director may order the opening of the Dungeness crab season in
21 **Districts 6, 7, 8, and 9** delayed for a period of an additional 15 days, and
22 authorize a fourth test to be conducted.

23 (d) The director may continue to follow this same procedure each time a test
24 results in a finding that Dungeness crabs are soft-shelled or of low quality, except
25 that tests shall not be conducted after January 1 for that season, and the opening of
26 the Dungeness crab season in **Districts 6, 7, 8, and 9** shall not be delayed by the
27 director beyond January 15.

28 **Comment.** Section 31965 restates the first, and third through sixth, sentences of former Fish
29 and Game Code Section 8276.2(c), without substantive change.

30 **Staff Note.** Proposed Section 31965 is intended to restate the first, and third through sixth,
31 sentences of existing Fish and Game Code Section 8280.1(b)(4)(B) to improve the clarity of those
32 provisions, without changing their substantive effect. The existing provisions read as follows:

33 “The director shall order the opening of the Dungeness crab season in Districts 6, 7, 8, and 9 on
34 December 1 if the quality tests authorized in subdivision (b) indicate the Dungeness crabs are not
35 soft-shelled or low quality.... If the tests are conducted on or about November 1 and result in a
36 finding that Dungeness crabs are soft-shelled or low quality, the director shall authorize a second
37 test to be conducted on or about November 15 pursuant to the approved testing program. If the
38 second test results in a finding that Dungeness crabs are soft-shelled or low quality, the director
39 may order the season opening delayed for a period of 15 days and may authorize a third test to be
40 conducted on or about December 1. If the third test results in a finding that Dungeness crabs
41 remain soft-shelled or of low quality, the director may order the season opening delayed for a
42 period of an additional 15 days and authorize a fourth test to be conducted. This procedure may
43 continue to be followed, except that tests shall not be conducted after January 1 for that season,
44 and the season opening shall not be delayed by the director later than January 15.”

45 **The staff invites comment on whether the restatement would cause any substantive**

1 **change in the meaning of these provisions.**

2 **§ 31970. Sale of crab meat extracted for testing**

3 31970. (a) The meat extracted from Dungeness crab tested pursuant to Section
4 31955 may be sold by the entity approved by the department to conduct the
5 testing, and revenues from that sale may be used for purposes of managing the
6 testing program.

7 (b) Revenues shall be deposited in an account managed and overseen by the
8 Pacific States Marine Fisheries Commission.

9 **Comment.** Section 31970 continues former Fish and Game Code Section 8276.2(b)(2)(A)
10 without substantive change.

11 **§ 31975. Inoperative date of article**

12 31975. This article shall become inoperative on April 1, 2019, and, as of January
13 1, 2020, is repealed, unless a later enacted statute that becomes operative on or
14 before January 1, 2020, deletes or extends the date on which this article becomes
15 inoperative or is repealed.

16 **Comment.** Section 31975 continues former Fish and Game Code Section 8276.2(d) without
17 substantive change.

18 **Article 5. Use of Traps Generally**

19 **§ 32050. Use of traps**

20 32050. (a) Subject to **Article 6 (commencing with Section 8275) of Chapter 2,**
21 **and Article 1 (commencing with Section 9000) of Chapter 4,** Dungeness crab
22 may be taken with Dungeness crab traps.

23 (b) A Dungeness crab trap may have any number of openings of any size.
24 However, every Dungeness crab trap shall have at least two rigid circular openings
25 of not less than 4 1/4 inches, inside diameter, on the top or side of the trap. If both
26 of the openings are located on the side of the trap, at least one of the openings
27 shall be located so that at least one-half of the opening is in the upper half of the
28 trap.

29 (c) In **Districts 6, 7, 8, and 9,** no trap shall be used to take Dungeness crab if
30 that trap is attached to another trap or other traps by a common line.

31 **Comment.** Subdivision (a) of Section 32050 combines and continues the first sentence of
32 former Fish and Game Code Section 8284(a) and former Fish and Game Code Section 9011(a)(1)
33 without substantive change.

34 Subdivision (b) continues former Fish and Game Code Section 9011(a)(2) without change.

35 Subdivision (c) continues former Fish and Game Code Section 9012(b) without substantive
36 change.

1 **Comment.** Section 32100 continues former Fish and Game Code Section 8276.5(h) without
2 substantive change.

3 **§ 32105. Legislative declaration**

4 32105. (a) It is the intent of the Legislature that the department, the council, and
5 the Dungeness crab task force work with the Pacific States Marine Fisheries
6 Commission and the Tri-state Dungeness Crab Commission to resolve any issues
7 pertaining to moving the fair start line south to the border of California and
8 Mexico.

9 (b) For the purposes of this section, the resolution of issues pertaining to the fair
10 start line shall be limited to assessing the positive and negative implications of
11 including **District 10** in the tri-state agreement, including working with the Tri-
12 state Dungeness Crab Commission to amend Oregon and Washington laws to
13 include **District 10** in the regular season fair start clause, and discussion of
14 providing different rules for **District 10** with regard to preseason quality testing.

15 **Comment.** Section 32105 continues former Fish and Game Code Section 8276.5(g) without
16 substantive change.

17 **§ 32110. Adoption of program**

18 32110. In consultation with the Dungeness crab task force, or its appointed
19 representatives, the director shall adopt a program, by March 31, 2013, for
20 Dungeness crab trap limits for all California permits.

21 **Comment.** Section 32110 continues the first sentence of former Fish and Game Code Section
22 8276.5(a) without change.

23 **Staff Note.** The staff invites comment on whether existing Fish and Game Code Section
24 8276.5(a) (which would be continued by proposed Section 32110) is obsolete, and need not
25 be continued in the proposed law.

26 **§ 32115. Program requirements**

27 32115. Unless the director finds that there is consensus in the Dungeness crab
28 industry that modifications to the following requirements are more desirable, with
29 evidence of consensus, including, but not limited to, the record of the Dungeness
30 crab task force, the program shall include all of the requirements of this article.

31 **Comment.** Section 32115 continues the second sentence of former Fish and Game Code
32 Section 8276.5(a) without substantive change.

33 **§ 32120. Tier requirements**

34 32120. (a) The program shall contain seven tiers of Dungeness crab trap limits
35 based on California landings receipts under California permits between November
36 15, 2003, and July 15, 2008, as follows:

37 (1) The 55 California permits with the highest California landings shall receive a
38 maximum allocation of 500 trap tags.

39 (2) The 55 California permits with the next highest California landings to those
40 in paragraph (1) shall receive a maximum allocation of 450 trap tags.

1 (3) The 55 California permits with the next highest California landings to those
2 in paragraph (2) shall receive a maximum allocation of 400 trap tags.

3 (4) The 55 California permits with the next highest California landings to those
4 in paragraph (3) shall receive a maximum allocation of 350 trap tags.

5 (5) The 55 California permits with the next highest California landings to those
6 in paragraph (4) shall receive a maximum allocation of 300 trap tags.

7 (6) The remaining California permits with the next highest California landings
8 to those in paragraph (5), which are not described in **paragraph (1) or (2) of**
9 **subdivision (g) of Section 8276.4**, shall receive a maximum allocation of 250 trap
10 tags.

11 (7) The California permits described in **paragraphs (1) and (2) of subdivision**
12 **(g) of Section 8276.4** shall receive a maximum allocation of 175 tags. The tags in
13 this tier shall not be transferable for the first two years of the program.

14 (b) Notwithstanding subdivision (a), the director shall not remove a
15 permit holder from a tier described in that subdivision if, after an allocation is
16 made pursuant to that subdivision, an appeal pursuant to Section EEE places a
17 permit holder in a tier different than the original allocation.

18 **Comment.** Section 32120 continues former Fish and Game Code Section 8276.5(a)(1) and
19 (a)(2) without substantive change.

20  **Staff Note. The staff invites comment on whether the second sentence of existing Fish**
21 **and Game Code Section 8276.5(a)(1)(G) (which would be continued by proposed Section**
22 **32120(a)(7)), indicating that tags in the described tier shall not be transferable for the first**
23 **two years of the Dungeness crab trap limit program, is obsolete and need not be continued**
24 **in the proposed law.**

25 **§ 32125. Program participant requirements**

26 32125. Participants in the program shall meet all of the following requirements:

27 (a) Pay a biennial fee for each trap tag issued pursuant to this article to pay the
28 pro rata share of costs of the program, including, but not limited to, informing
29 permit holders of the program, collecting fees, acquiring and sending trap tags to
30 permit holders, paying for a portion of enforcement costs, and monitoring the
31 results of the program. The fee shall not exceed five dollars (\$5) per trap, per two-
32 year period. All of the trap tags allocated to each permit pursuant to this article
33 shall be purchased by the permit holder or the permit shall be void.

34 (b) Purchase a biennial crab trap limit permit of not more than one thousand
35 dollars (\$1,000) per two-year period to pay for the department's reasonable
36 regulatory costs.

37 (c) Not lease a crab trap tag.

38 (d) Transfer a tag only as part of a transaction to purchase a California permitted
39 crab vessel.

40 (e) A Dungeness crab trap that is fished shall contain a trap tag that is fastened
41 to the main buoy, and an additional tag provided by the permit holder attached to

1 the trap. The department shall mandate the information that is required to appear
2 on both buoy and trap tags.

3 **Comment.** Section 32125 continues former Fish and Game Code Section 8276.5(a)(3) without
4 substantive change.

5 **§ 32130. Department obligations**

6 32130. The department shall annually provide an accounting of all costs
7 associated with the crab trap limit program, and use excess funds collected to
8 reduce the cost of the crab trap limit permit fee or tag fee in subsequent years of
9 the program.

10 **Comment.** Section 32130 continues former Fish and Game Code Section 8276.5(a)(4) without
11 substantive change.

12 **§ 32135. Lost tags**

13 32135. Permitholders may replace lost tags by application to the department,
14 and payment of a fee not to exceed the reasonable costs incurred by the
15 department, which may be waived or reduced by the department in the case of
16 catastrophic loss of tags.

17 **Comment.** Section 32135 continues former Fish and Game Code Section 8276.5(a)(5) without
18 substantive change.

19 **Staff Note.** Existing Fish and Game Code Section 8276.5(a)(6) (which would be continued
20 by Section 32135) relates to the appeal by a Dungeness crab permitholder of a trap tag allocation,
21 an appeal that the provision indicates must have been submitted to the director by March 31,
22 2014. Based on that requirement, existing Section 8276.5(a)(6) has not been continued in the
23 proposed law.

24 **The staff invites comment on whether Section 8276.5(a)(6) should be continued in the**
25 **proposed law.**

26 **§ 32140. Violation of program requirement**

27 32140. (a) In addition to criminal penalties authorized by law, a violation of the
28 requirements of the program shall be subject to the following civil penalties:

29 (1) Conviction of a first offense shall result in a fine of not less than two
30 hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) per
31 illegal trap or fraudulent tag.

32 (2) Conviction of a second offense shall result in a fine of not less than five
33 hundred dollars (\$500) and not more than two thousand five hundred dollars
34 (\$2,500) per illegal trap or fraudulent tag, and the permit may be suspended for
35 one year.

36 (3) Conviction of a third offense shall result in a fine of not less than one
37 thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) per
38 illegal trap or fraudulent tag, and the permit may be permanently revoked.

39 (b) The severity of a penalty within the ranges described in subdivision (a) shall
40 be based on a determination whether the violation was willful or negligent and
41 other factors.

1 (c) The portion of monetary judgments for noncompliance that are paid to the
2 department shall be deposited in the Dungeness Crab Account created pursuant to
3 Section EEE.

4 **Comment.** Section 32140 continues former Fish and Game Code Section 8276.5(b) without
5 substantive change.

6 **§ 32145. Submission of proposed program to task force**

7 32145. (a) The director shall submit a proposed program pursuant to this section
8 to the Dungeness crab task force for review, and shall not implement the program
9 until the task force has had 60 days or more to review the proposed program and
10 recommend any proposed changes.

11 (b) The director may implement the program earlier than 60 days after it is
12 submitted to the Dungeness crab task force for review, if recommended by the task
13 force.

14 (c) After the program is implemented, the director may modify the program, if
15 consistent with the requirements of this article, after consultation with the
16 Dungeness crab task force or its representatives, and after the task force has had
17 60 days or more to review the proposed modifications and recommend any
18 proposed changes.

19 (d) The director may implement the modifications earlier than 60 days after it is
20 sent to the Dungeness crab task force for review, if recommended by the task
21 force.

22 **Comment.** Section 32145 continues former Fish and Game Code Section 8276.5(d) without
23 substantive change.

24 **§ 32150. Dungeness Crab Account**

25 32150. (a) The Dungeness Crab Account is hereby established in the Fish and
26 Game Preservation Fund, and the fees collected pursuant to this article shall be
27 deposited in that account. The money in the account shall be used by the
28 department, upon appropriation by the Legislature, for administering and
29 enforcing the program.

30 (b) For purposes of meeting the necessary expenses of initial organization and
31 operation of the program until fees may be collected, or other funding sources may
32 be received, the department may borrow money as needed for these expenses from
33 the council. The borrowed money shall be repaid within one year from the fees
34 collected or other funding sources received. The council shall give high priority to
35 providing funds or services to the department, in addition to loans, to assist in the
36 development of the program, including, but not limited to, the costs of convening
37 the Dungeness crab task force, environmental review, and the department's costs
38 of attending meetings with task force members.

39 **Comment.** Section 32150 continues former Fish and Game Code Section 8276.5(e) and (f)
40 without substantive change.

1 **§ 32210. Ports with multiple representatives**

2 32210. (a) For ports with more than one representative, elected members and
3 their alternates shall represent both the upper and lower, and in some cases middle,
4 production levels.

5 (b) Production levels shall be based on the average landing during the previous
6 five years, of valid crab permit holders who landed a minimum of 25,000 pounds
7 of crab during the same period.

8 **Comment.** Section 32210 continues former Fish and Game Code Section 8276.4(b) without
9 substantive change.

10 **§ 32215. Responsibilities of task force**

11 32215. The Dungeness crab task force shall do all of the following:

12 (a) Review and evaluate the Dungeness crab management measures described in
13 **Section 8276.5**, with initial recommendations to the Joint Committee on Fisheries
14 and Aquaculture, the department, and the commission, no later than January 15,
15 2015, and final recommendations to those entities no later than January 15, 2017.

16 (b) Make recommendations by January 15, 2015, on all of the following: the
17 need for a permanent Dungeness crab advisory committee, the economic impact of
18 the program described in **Section 8276.5** on permit holders of different tiers and
19 the economies of different ports, the cost of the program to the department,
20 including enforcement costs, the viability of a buyout program for the
21 permit holders described in **subparagraph (G) of paragraph (1) of subdivision**
22 **(a) of Section 8276.5**, refining sport and commercial Dungeness crab
23 management, and the need for statutory changes to accomplish task force
24 objectives.

25 (c) In considering Dungeness crab management options, prioritize the review of
26 pot limit restriction options, current and future sport and commercial fishery
27 effort, season modifications, essential fishery information needs, and short- and
28 long-term objectives for improved management.

29 **Comment.** Section 32215 continues former Fish and Game Code Section 8276.4(c) without
30 substantive change.

31 **§ 32220. Subcommittees**

32 32220. (a) The task force may establish subcommittees of specific user groups
33 from the task force membership to focus on issues specific to sport fishing,
34 commercial harvest, or crab processing.

35 (b) The subcommittees shall report their recommendations, if any, to the task
36 force.

37 **Comment.** Section 32220 continues former Fish and Game Code Section 8276.4(d) without
38 substantive change.

1 **§ 32225. Grant to cover costs**

2 32225. The Ocean Protection Council may include in a grant funding to cover
3 department staffing costs, as well as travel costs for task force participants
4 specified in subdivision (f) of Section 32205.

5 **Comment.** Section 32225 continues former Fish and Game Code Section 8276.4(e) without
6 substantive change.

7 **§ 32230. Task force recommendations**

8 32230. (a) Except as otherwise provided in this article and Article 6
9 (commencing with Section 37400), a recommendation shall be forwarded to the
10 Joint Committee on Fisheries and Aquaculture, the department, and the
11 commission upon an affirmative vote of at least two-thirds of the task force
12 members.

13 (b) For the purposes of this article and Article 6 (commencing with Section
14 37400), a proposed recommendation that receives an affirmative vote of at least 15
15 of the non-ex officio members of the Dungeness crab task force may be
16 transmitted to the director or the Legislature as a recommendation, shall be
17 considered to be the consensus of the task force, and shall be considered to be
18 evidence of consensus in the Dungeness crab industry. Any proposed
19 recommendation that does not receive a vote sufficient to authorize transmittal to
20 the director or Legislature as a recommendation shall be evidence of a lack of
21 consensus by the Dungeness crab task force, and shall be considered to be
22 evidence of a lack of consensus in the crab industry.

23 **Comment.** Subdivision (a) of Section 32230 continues former Fish and Game Code Section
24 8276.4(f) without substantive change.

25 Subdivision (b) continues former Fish and Game Code Section 8276.5(c) without substantive
26 change.

27 **§ 32235. Inoperative date of article**

28 32235. This article shall become inoperative on April 1, 2019, and, as of January
29 1, 2020, is repealed, unless a later enacted statute that becomes operative on or
30 before January 1, 2020, deletes or extends the date on which this article becomes
31 inoperative or is repealed.

32 **Comment.** Section 32235 continues former Fish and Game Code Section 8276.4(h) without
33 substantive change.

34 CHAPTER 4. DUNGENESS CRAB VESSEL PERMITS

35 Article 1. General Provisions

36 **§ 32300. Permit requirement**

37 32300. A person shall not use a vessel to take, possess, or land Dungeness crab
38 for commercial purposes using Dungeness crab traps authorized pursuant to

1 **Section 9011**, unless the owner of that vessel has a Dungeness crab vessel permit
2 for that vessel that has not been suspended or revoked.

3 **Comment.** Section 32300 continues former Fish and Game Code Section 8280.1(a) without
4 substantive change.

5 **§ 32305. Taking or landing without permit**

6 32305. The commission may revoke the commercial fishing license issued
7 pursuant to **Section 7852** of any person owning a fishing vessel engaging in the
8 taking or landing of Dungeness crab by traps for which that person has not
9 obtained a Dungeness crab vessel permit, and the commission may revoke the
10 registration, issued pursuant to **Section 7881**, for that vessel.

11 **Comment.** Section 32305 continues former Fish and Game Code Section 8280.4(a) without
12 substantive change.

13 **§ 32310. Fees for permit**

14 32310. The department shall charge a fee for each Dungeness crab vessel permit
15 of two hundred dollars (\$200) for a resident of California, and four hundred
16 dollars (\$400) for a nonresident of California, for the reasonable regulatory costs
17 of the department.

18 **Comment.** Section 32310 continues former Fish and Game Code Section 8280.6(a) without
19 substantive change.

20  **Staff Note.** On September 18, 2015, a three judge panel of the Ninth Circuit Court of
21 Appeals, in *Marilley v. Bonham*, 802 F.3d 958 (9th Cir. 2015), held that the setting of a
22 Dungeness crab vessel permit fee for nonresidents under existing Section 8280.6 (which would be
23 continued by proposed Section 32310), higher than the fee for the same permit for residents
24 violates the Privileges and Immunities Clause of the United States Constitution. U.S. Const. art.
25 IV, § 2, cl. 1.

26 **On February 26, 2016, the opinion of the three judge panel was ordered to be reheard en**
27 **banc. The staff has therefore proposed no revision to Section 8550.5 based on this decision**
28 **at this time.**

29 **§ 32315. Retaining eligibility for permit**

30 32315. (a) In order for a vessel to retain eligibility, a permit shall be obtained
31 each year subsequent to the initial permit year and the vessel shall be registered
32 pursuant to **Section 7881**.

33 (b) The vessel owner shall have a valid commercial fishing license issued to that
34 person pursuant to **Section 7852** that has not been suspended or revoked.

35 (c) Minimum landings of Dungeness crab shall not be required annually to be
36 eligible for a Dungeness crab vessel permit.

37 **Comment.** Section 32315 continues the second through fourth sentences of former Fish and
38 Game Code Section 8280.2(e) without substantive change.

39 **§ 32320. Due date for application**

40 32320. Applications for renewal of all Dungeness crab vessel permits shall be
41 received by the department, or, if mailed, postmarked, by April 30 of each year.

1 **Comment.** Section 32320 continues the first sentence of former Fish and Game Code Section
2 8280.2(e) without substantive change.

3 **§ 32325. Permitted persons**

4 32325. (a) A Dungeness crab vessel permit shall be issued only to the person
5 owning the vessel at the time of application for that permit. A person shall not be
6 issued more than one permit for each vessel owned by that person and qualifying
7 for a permit pursuant to **Section 8280.1**.

8 (b) A Dungeness crab vessel permit shall be issued only to the owner of a vessel
9 taking crab by traps. A permit shall not be issued to the owner of a vessel using
10 trawl or other nets unless the owner of that vessel qualifies for a permit pursuant to
11 **paragraph (1) of subdivision (b) of Section 8280.1**. A trawl or other net vessel
12 authorized under this code to take Dungeness crab incidental to the taking of fish
13 in trawl or other nets shall not be required to possess a Dungeness crab vessel
14 permit.

15 (c) The owner of a Dungeness crab vessel, for purposes of this section, may
16 include a person with a bona fide contract for the purchase of a vessel who
17 otherwise meets all other qualifications for a Dungeness crab vessel permit. If a
18 contract is found to be fraudulent or written or entered into for the purposes of
19 circumventing qualification criteria for the issuance of a permit, the applicant shall
20 be permanently ineligible for a Dungeness crab vessel permit.

21 (d) Dungeness crab vessel permits shall not be combined or otherwise
22 aggregated for the purpose of replacing smaller vessels in the fishery with a larger
23 vessel, and a permit shall not be divided or otherwise separated for the purpose of
24 replacing a vessel in the fishery with two or more smaller vessels.

25 **Comment.** Section 32325 continues former Fish and Game Code Section 8280.2(a)-(d)
26 without substantive change.

27 **§ 32330. Submission of false information**

28 32330. If a person submits false information for the purposes of obtaining a
29 Dungeness crab vessel permit under this chapter, the department shall revoke all
30 of the following privileges:

31 (a) The person's Dungeness crab vessel permit, if issued.

32 (b) The person's commercial fishing license issued pursuant to **Section 7850**, for
33 a period of not less than five years.

34 (c) The commercial boat registration of any vessel registered to that person
35 pursuant to **Section 7881** of which that person is the owner, for a period of not less
36 than five years.

37 **Comment.** Section 32330 continues former Fish and Game Code Section 8280.1(g)(1) without
38 substantive change.

39 **§ 32335. Additional penalty for fishing without permit**

40 32335. In addition to criminal penalties authorized by law, a person who fishes
41 without a Dungeness crab vessel permit, or who uses a Dungeness crab vessel

1 permit to fish illegally on another vessel other than the permitted one, shall be
2 subject to a fine not more than twenty thousand dollars (\$20,000) and, at the
3 discretion of the department, revocation of the person's fishing license for a period
4 not to exceed five years, and revocation of the person's commercial boat
5 registration license, for a period not to exceed five years.

6 **Comment.** Section 32335 continues former Fish and Game Code Section 8280.1(g)(2) without
7 substantive change.

8 **§ 32340. Review panel**

9 32340. (a) The director shall convene a Dungeness crab review panel for the
10 purpose of reviewing applications for Dungeness crab vessel permits pursuant to
11 **paragraphs (2) and (4) of subdivision (b) of Section 8280.1** and applications for
12 permit transfers pursuant to **Section 8280.3**, if the department determines that the
13 additional review and advice of the panel will be helpful in deciding whether to
14 issue a permit or approve a transfer.

15 (b) The panel shall consist of one nonvoting representative of the department,
16 and three public voting members selected by the director to represent the
17 Dungeness crab fishing industry. One public member shall be licensed pursuant to
18 **Article 7 (commencing with Section 8030) of Chapter 1**, and active in
19 Dungeness crab processing in this state. Two public members shall be licensed
20 pursuant to **Section 7852** and active in the taking and landing of Dungeness crab
21 in this state, one of which shall be from Sonoma County or a county south of
22 Sonoma County, and one of which shall be from Mendocino County or a county
23 north of Mendocino County.

24 (c) The public members shall be reimbursed for their necessary and proper
25 expenses to participate on the panel.

26 (d) A public member shall serve on the panel for not more than four consecutive
27 years.

28 (e) The panel may conduct its review of applications referred to it by mail or
29 teleconference.

30 (f) The panel shall review each application for a permit or permit transfer
31 referred to it by the department, and shall consider all oral and written evidence
32 presented by the applicant that is pertinent to the application under review. If the
33 panel recommends issuance of a permit or approval of the transfer, the department
34 may issue a Dungeness crab vessel permit pursuant to **Section 8280.1** or approve a
35 permit transfer pursuant to **Section 8280.3**.

36 (g) All appeals of denials of Dungeness crab vessel permits shall be made to the
37 commission, and may be heard by the commission, if the appeal of denial is filed
38 in writing with the commission not later than 90 days from the date of a permit
39 denial. The commission may order the department to issue a permit upon appeal if
40 the commission finds that the appellant qualified for a permit under this chapter.

41 **Comment.** Section 32340 continues former Fish and Game Code Section 8280.5(a)-(e)
42 without substantive change.

1 (b) A permit may be issued under this section to a person whose commercial
2 fishing license was issued pursuant to **Article 7 (commencing with Section 8030)**
3 **of Chapter 1**, and not pursuant to **Section 7852**.

4 **Comment.** Section 32405 combines and restates former Fish and Game Code Section
5 8280.1(b)(1) and (b)(2) without substantive change.

6 **Staff Notes.** (1) Proposed Section 32405 is intended to combine and restate existing Fish and
7 Game Code Section 8280.1(b)(1) and (b)(2) to improve the clarity of those paragraphs, without
8 changing their substantive effect. The existing paragraphs read as follows:

9 “(b) A Dungeness crab vessel permit may be issued only to the following persons for use on
10 qualifying vessels:

11 (1) A person, who has a commercial fishing license issued pursuant to Section 7852 or Article
12 7 (commencing with Section 8030) of Chapter 1 that has not been suspended or revoked, who is
13 the owner of a commercial fishing vessel that has been registered with the department pursuant to
14 Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four
15 landings in each of three Dungeness crab seasons in the period from November 1, 1984, to April
16 1, 1994, have been made from that vessel. This paragraph includes any person purchasing a
17 vessel qualifying pursuant to this paragraph.

18 (2) A person who has a commercial fishing license issued pursuant to Section 7852 or Article 7
19 (commencing with Section 8030) of Chapter 1 that has not been suspended or revoked, who is the
20 owner of a commercial fishing vessel that has been registered with the department pursuant to
21 Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four
22 landings in one of the Dungeness crab seasons in the period from November 1, 1984, to April 1,
23 1994, have been made from that vessel in this state as documented by landing receipts delivered
24 to the department pursuant to Section 8046, who the department finds to have been unable, due to
25 illness or injury or any other hardship, to make a minimum of four landings in each of two of the
26 previous three Dungeness crab seasons, and who, in good faith, intended to participate in the
27 Dungeness crab fishery in those seasons.”

28 **The staff invites comment on whether the restatement of these paragraphs would cause**
29 **any substantive change in their meaning.**

30 (2) Existing Fish and Game Code Section 8280.1(b)(1) and (b)(2) both alternatively authorize
31 the issuance of a Dungeness crab vessel permit to a person “who has a commercial fishing license
32 issued pursuant to Section 7852 or Article 7 (commencing with Section 8030) of Chapter 1 that
33 has not been suspended or revoked.” (Emphasis added.)

34 The staff is unaware of a “commercial fishing license” that can currently be issued pursuant to
35 “Article 7 (commencing with Section 8030) of Chapter 1” [of Part 3 of Division 6] of the existing
36 code. Moreover, existing Fish and Game Code Section 8280.1(d) provides (with emphasis
37 added):

38 “A person shall not be issued a Dungeness crab vessel permit under this section for any vessel
39 unless that person has a valid commercial fishing license issued pursuant to Section 7852 that has
40 not been suspended or revoked.”

41 **The staff invites comment on how to resolve this apparent discrepancy.**

42 (3) Neither existing Section 8280.1(b)(1) nor (b)(2) explicitly require that the permit sought
43 pursuant to either of those provisions must be placed on the vessel described in either provision
44 that provided the basis for permit eligibility. Cf. existing Section 8280.1(b)(6) (requiring permit
45 sought pursuant to that subdivision “to be placed on a vessel that the person purchases or
46 contracts for construction on or before April 1, 1996”).

47 **The staff invites comment on whether a permit obtained pursuant to either Section**
48 **8280.1(b)(1) or (b)(2) must be placed on the vessel that provided the basis for eligibility**
49 **under either of those provisions, and if so whether proposed Section 32405 should expressly**
50 **state that requirement.**

51 (4) Qualification for a permit under existing Section 8280.1(b)(2) (as well as Section

1 8280.1(b)(3), (b)(5), and (b)(6)) requires that the landings needed for permit eligibility must be
2 “documented by landing receipts delivered to the department pursuant to Section 8046.”
3 Qualification for a permit under existing Section 8280.1(b)(1) (as well as existing Section
4 8280.1(b)(4)) does not expressly include that documentation requirement.

5 **The staff invites comment on whether this requirement, or the expression of this**
6 **requirement, should be standardized among all Dungeness crab permit eligibility**
7 **provisions.**

8 **§ 32410. Eligibility based on historic participation in fishery**

9 32410. (a) Pursuant to Section 32400, a Dungeness crab vessel permit may be
10 issued to the owner of a fishing vessel that has been registered pursuant to **Section**
11 **7881** in each of the 1991–92, 1992–93, and 1993–94 permit years and is not
12 equipped for trawling with a net, if the owner satisfies the following additional
13 requirements:

14 (1) The owner meets the requirements of **Section 8101**.

15 (2) The owner made not less than four landings of Dungeness crab taken in a
16 crab trap in a Dungeness crab season on or before March 31, 1994, as documented
17 by landing receipts prepared in that person’s name that were delivered to the
18 department pursuant to **Section 8046**.

19 (3) The owner has not been issued a permit for another vessel pursuant to any
20 other section of this article.

21 (b) The department shall separately identify permits issued pursuant to this
22 section, and those permits shall become immediately null and void upon the death
23 of the permittee.

24 (c) The department shall not issue or renew any permit under this section if the
25 applicant or permittee failed to meet the participation requirements of four
26 landings in a Dungeness crab season prior to April 1, 1994, or has been issued a
27 Dungeness crab permit for a vessel under any other section of this article.

28 (d) Not more than one Dungeness crab vessel permit shall be issued to any
29 person pursuant to this section.

30 (e) Notwithstanding Article 3 (commencing with Section 37800), all permits
31 issued pursuant to this section shall be nontransferable.

32 **Comment.** Section 32410 restates former Fish and Game Code Section 8280.1(b)(3) without
33 substantive change.

34 **Staff Notes.** (1) Proposed Section 32410 is intended to restate existing Fish and Game Code
35 Section 8280.1(b)(3) to improve the clarity of that paragraph, without changing its substantive
36 effect. The existing paragraph reads as follows:

37 “(b) A Dungeness crab vessel permit may be issued only to the following persons for use on
38 qualifying vessels:

39

40 (3) A person who has a commercial fishing license issued pursuant to Section 7852 that has
41 not been suspended or revoked, who meets the requirements of Section 8101, and who,
42 notwithstanding Section 8101, is, at the time of application, the owner of a fishing vessel that is
43 not equipped for trawling with a net and that has been registered pursuant to Section 7881 in each
44 of the 1991–92, 1992–93, and 1993–94 permit years. Not more than one Dungeness crab vessel
45 permit shall be issued to any person qualifying under Section 8101 and all permits issued under

1 Section 8101, notwithstanding subdivision (b) of Section 8280.3, shall be nontransferable. A
2 person qualifying for a permit under this paragraph shall have participated in the Dungeness crab
3 fishery on or before March 31, 1994, as documented by landing receipts that were prepared in
4 that person's name for not less than four landings of Dungeness crab taken in a crab trap in a
5 Dungeness crab season and were delivered to the department pursuant to Section 8046. A person
6 shall not be issued a permit under this paragraph if that person has been issued a permit under any
7 other provision of this section for another vessel. For purposes of Section 8101, "participated in
8 the fishery" means made not less than four landings of Dungeness crab taken by traps in that
9 person's name in one Dungeness crab season. The department shall separately identify permits
10 issued pursuant to this paragraph and those permits shall become immediately null and void upon
11 the death of the permittee. The department shall not issue or renew any permit under this
12 paragraph to a person if the person failed to meet the participation requirements of four landings
13 in one season prior to April 1, 1994, or has been issued a Dungeness crab permit for a vessel
14 under any other paragraph of this subdivision."

15 **The staff invites comment on whether the restatement would cause any substantive**
16 **change in the meaning of Section 8280.1(b)(3).**

17 (2) The text at the beginning of existing Section 8280.1(b)(3), providing both that the permit
18 applicant must "[meet] the requirements of Section 8101," and satisfy other requirements
19 "notwithstanding Section 8101," is substantially confusing. Is the latter reference intended to be
20 an exception to the requirements of Section 8101 that otherwise would have to be met, or is it
21 meant to refer to some requirement beyond what is required by Section 8101?

22 **The staff invites comment clarifying the intent of this statutory language.**

23 **§ 32415. Eligibility based on work on another vessel**

24 32415. Pursuant to Section 32400, a Dungeness crab vessel permit may be
25 issued to the owner of a vessel that has been registered pursuant to **Section 7881**
26 in each of the 1991–92, 1992–93, and 1993–94 permit years, and satisfies the
27 following additional requirements:

28 (a) The owner held a Dungeness crab permit issued pursuant to former Fish and
29 Game Code Section 8280 as it read on April 1, 1994.

30 (b) The owner participated in the Dungeness crab fishery between November 1,
31 1984, and April 1, 1994.

32 (c) The owner did not make, or department records do not indicate that the
33 owner made, a minimum of four landings per season for three Dungeness crab
34 seasons from that vessel, or in the owner's name, because the owner was working
35 aboard another vessel engaged in the Dungeness crab fishery in California,
36 pursuant to a partnership or other working arrangement.

37 **Comment.** Section 32415 restates former Fish and Game Code Section 8280.1(b)(4)(A)
38 without substantive change.

39 **Staff Notes.** (1) Proposed Section 32415 is intended to restate existing Fish and Game Code
40 Section 8280.1(b)(4)(A) to improve the clarity of that subparagraph, without changing its
41 substantive effect. The existing subparagraph reads as follows:

42 "(b) A Dungeness crab vessel permit may be issued only to the following persons for use on
43 qualifying vessels:

44

45 (4) A person who has a commercial fishing license issued pursuant to Section 7852 that has
46 not been suspended or revoked, who meets one of the following conditions:

47 (A) The person held a Dungeness crab permit issued pursuant to Section 8280 as it read on

1 April 1, 1994, and participated in the Dungeness crab fishery between November 1, 1984, and
2 April 1, 1994, and is the owner of a vessel that has been registered with the department in each of
3 the 1991–92, 1992–93, and 1993–94 permit years but did not make landings or the department
4 records do not indicate a minimum of four landings per season for three Dungeness crab seasons
5 from that vessel or in that person’s name because of a partnership or other working arrangement
6 where the person was working aboard another vessel engaged in the Dungeness crab fishery in
7 California.”

8 **The staff invites comment on whether the restatement would cause any substantive**
9 **change in the meaning of Section 8280.1(b)(4)(A).**

10 (2) The last part of existing Section 8280.1(b)(4)(A) (which would be continued by proposed
11 Section 32415(c)) requires, as a condition of permit eligibility pursuant to that paragraph, that
12 the applicant “did not make landings or the department records do not indicate a minimum of four
13 landings per season for three Dungeness crab seasons from that vessel or in that person’s name
14 because of a partnership or other working arrangement where the person was working aboard
15 another vessel engaged in the Dungeness crab fishery in California.” (Emphasis added.) The staff
16 has the following questions about this requirement:

17 (a) Does the non-owned vessel that the applicant was working aboard that prevented the
18 applicant from making a minimum of four landings in three prior crab seasons have to have made
19 those landings? If not, how is it established that the applicant was unable to make the required
20 landings because the applicant was working aboard another vessel?

21 (b) Do the three prior crab seasons in which the applicant was unable to make the minimum
22 number of required landings have to be on or before to April 1, 1994, and/or on or after November
23 1, 1984, as is required by existing Section 8280.1(b)(1), (b)(2), (b)(4)(B), (b)(5), and (b)(6)?

24 **The staff invites comment on these issues.**

25 **§ 32420. Eligibility based on specialized landings**

26 32420. Pursuant to Section 32400, a Dungeness crab vessel permit may be
27 issued to the owner of a vessel that has been registered pursuant to **Section 7881**
28 in each of the 1991–92, 1992–93, and 1993–94 permit years, if the following
29 requirements are satisfied:

30 (a) The owner held a Dungeness crab permit issued pursuant to former Fish and
31 Game Code Section 8280 as it read on April 1, 1994.

32 (b) The owner participated in the Dungeness crab fishery between November 1,
33 1984, and April 1, 1994.

34 (c) A minimum of four landings utilizing traps were made from that vessel in at
35 least one Dungeness crab season from November 1, 1984, and April 1, 1994.

36 (d) In each of two other Dungeness crab seasons in that same period, landings
37 using traps were made from that vessel, as documented by landing receipts, that
38 satisfy one of the following requirements:

39 (1) A minimum of four landings were made.

40 (2) Landings in excess of 10,000 pounds were made.

41 **Comment.** Section 32420 restates former Fish and Game Code Section 8280.1(b)(4)(B)
42 without substantive change.

43 **Staff Note.** Proposed Section 32420 is intended to restate existing Fish and Game Code
44 Section 8280.1(b)(4)(B) to improve the clarity of that subparagraph, without changing its
45 substantive effect. The existing subparagraph reads as follows:

46 “(b) A Dungeness crab vessel permit may be issued only to the following persons for use on
47 qualifying vessels:

1
2 (4) A person who has a commercial fishing license issued pursuant to Section 7852 that has
3 not been suspended or revoked, who meets one of the following conditions:

4
5 (B) The person held a Dungeness crab permit issued under Section 8280 as it read on April 1,
6 1994, and is the owner of a commercial fishing vessel that has been registered with the
7 department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years
8 and from which a minimum of four landings utilizing traps were made in at least one Dungeness
9 crab season in the period between November 1, 1984, and April 1, 1994, and from which either
10 four landings were made utilizing traps or landings in excess of 10,000 pounds were made
11 utilizing traps in each of two other Dungeness crab seasons in that same period, as documented
12 by landing receipts.”

13 **The staff invites comment on whether the restatement would cause any substantive**
14 **change in the meaning of Section 8280.1(b)(4)(B).**

15 **§ 32425. Eligibility based on hardship due to nonresidency**

16 32425. Pursuant to Section 32400, a Dungeness crab vessel permit may be
17 issued to a person who satisfies all of the following requirements:

18 (a) The person held a Dungeness crab permit issued pursuant to former Fish and
19 Game Code Section 8280 as it read on April 1, 1994, or was an officer in a
20 California corporation that was licensed pursuant to Article 7 (commencing with
21 Section 8030) of Chapter 1, as of April 1, 1994.

22 (b) The person began construction or reconstruction of a vessel on or before
23 January 1, 1992, for the purpose of engaging in the California Dungeness crab
24 fishery, including purchase of equipment and gear.

25 (c) The person intended in good faith to thereafter participate in the California
26 Dungeness crab fishery.

27 (d) A denial of a permit would create a financial hardship on the person.

28 (e) For purposes of determining financial hardship, the applicant is a
29 nonresident, and cannot participate with his or her vessel or vessels in the
30 Dungeness crab fishery of another state, because of that state’s limited entry or
31 moratorium on the issuance of permits for the taking of Dungeness crab.

32 **Comment.** Section 32425 restates former Fish and Game Code Section 8280.1(b)(4)(C)
33 without substantive change.

34 **Staff Notes.** (1) Proposed Section 32425 is intended to restate existing Fish and Game Code
35 Section 8280.1(b)(4)(C) to improve the clarity of that subparagraph, without changing its
36 substantive effect. The existing subparagraph reads as follows:

37 “(b) A Dungeness crab vessel permit may be issued only to the following persons for use on
38 qualifying vessels:

39
40 (4) A person who has a commercial fishing license issued pursuant to Section 7852 that has
41 not been suspended or revoked, who meets one of the following conditions:

42
43 (C) The person held a Dungeness crab vessel permit issued under Section 8280 as it read on
44 April 1, 1994, or was an officer in a California corporation that was licensed pursuant to Article 7
45 (commencing with Section 8030) of Chapter 1 as of April 1, 1994, and began construction or
46 reconstruction of a vessel on or before January 1, 1992, for the purpose of engaging in the

1 Dungeness crab fishery, including the purchase of equipment and gear to engage in that fishery in
2 California. A person may be issued a permit under this condition only if the person intended in
3 good faith to participate in the California Dungeness crab fishery, a denial of a permit would
4 create a financial hardship on that person, and, for purposes of determining financial hardship, the
5 applicant is a nonresident and cannot participate with his or her vessel or vessels in the
6 Dungeness crab fishery of another state because of that state's limited entry or moratorium on the
7 issuance of permits for the taking of Dungeness crab."

8 **The staff invites comment on whether the restatement would cause any substantive**
9 **change in the meaning of Section 8280.1(b)(4)(C).**

10 (2) The last part of existing Section 8280.1(b)(4)(C) (which would be continued by proposed
11 Section 32425(d) and (e)) requires, as a condition of permit eligibility pursuant to that paragraph,
12 that "a denial of a permit would create a financial hardship on that person, and, for purposes of
13 determining financial hardship, the applicant is a nonresident and cannot participate with his or
14 her vessel or vessels in the Dungeness crab fishery of another state because of that state's limited
15 entry or moratorium on the issuance of permits for the taking of Dungeness crab. The staff has the
16 following questions about this requirement:

17 (a) Is the nonresidency described in this provision an essential prerequisite to establishing the
18 financial hardship required by this provision, or can a resident applicant establish that denial of a
19 permit would cause financial hardship, for reasons other than the described nonresidency?

20 (b) If an applicant establishes the nonresidency described in this provision, is that fact by itself
21 sufficient to establish the financial hardship required by the provision, or must this nonresident
22 additionally establish that a denial of a permit would cause that particular applicant financial
23 hardship?

24 **The staff invites comment on these issues.**

25 **§ 32430. Eligibility based on continuous ownership of participating vessel**

26 32430. (a) Pursuant to Section 32400, a Dungeness crab vessel permit may be
27 issued to a person who satisfies all of the following requirements:

28 (1) The person held a Dungeness crab permit issued pursuant to former Fish and
29 Game Code Section 8280 as it read on April 1, 1994.

30 (2) The person made a minimum of four landings of Dungeness crab taken by
31 traps in each of three Dungeness crab seasons in the period from November 1,
32 1984, to April 1, 1994, in his or her name, in this state, from a vessel owned by
33 that person, as documented by landing receipts.

34 (3) Between April 1, 1991, and January 1, 1995, the person purchased,
35 contracted to purchase, or constructed a vessel that does not otherwise qualify for
36 a Dungeness crab vessel permit pursuant to Section 32405, 32415, 32420, or
37 32425.

38 (4) The person has continuously owned that vessel since its purchase or
39 construction.

40 (5) The person satisfies either of the following requirements:

41 (A) The person used that vessel to take Dungeness crab in this state on or before
42 March 31, 1995, as documented by one or more landing receipts delivered to the
43 department pursuant to **Section 8046**.

44 (B) The person intended in good faith, based on evidence that the department
45 and the review panel may require, including investment in crab gear, to enter that
46 vessel in this state's Dungeness crab fishery not later than December 1, 1995.

1 (b) Not more than one permit may be issued to any one person under this
2 section.

3 **Comment.** Section 32430 restates former Fish and Game Code Section 8280.1(b)(5) without
4 substantive change.

5 **Staff Note.** Proposed Section 32430 is intended to restate existing Fish and Game Code
6 Section 8280.1(b)(5) to improve the clarity of that paragraph, without changing its substantive
7 effect. The existing paragraph reads as follows:

8 “(b) A Dungeness crab vessel permit may be issued only to the following persons for use on
9 qualifying vessels:

10

11 (5) A person who has a commercial fishing license issued pursuant to Section 7852 that has
12 not been suspended or revoked, who held a Dungeness crab permit issued under Section 8280 as
13 it read on April 1, 1994, who made a minimum of four landings of Dungeness crab taken by traps
14 in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994,
15 in his or her name in this state from a vessel owned by that person, as documented by landing
16 receipts, who, between April 1, 1991, and January 1, 1995, purchased, contracted to purchase, or
17 constructed a vessel, not otherwise qualifying pursuant to paragraph (1), (2), or (4), who has
18 continuously owned that vessel since its purchase or construction, and who either (A) has used
19 that vessel for the taking of Dungeness crab in this state on or before March 31, 1995, as
20 documented by one or more landing receipts delivered to the department pursuant to Section
21 8046, or (B) intended in good faith, based on evidence that the department and the review panel
22 may require, including investment in crab gear, to enter that vessel in this state’s Dungeness crab
23 fishery not later than December 1, 1995. Not more than one permit may be issued to any one
24 person under this paragraph.”

25 **The staff invites comment on whether the restatement would cause any substantive**
26 **change in the meaning of Section 8280.1(b)(5).**

27 **§ 32435. Eligibility based on vessel of limited size**

28 32435. (a) Pursuant to Section 32400, a Dungeness crab vessel permit may be
29 issued to a person if all of the following requirements are satisfied:

30 (1) The person held a Dungeness crab permit issued pursuant to former Fish and
31 Game Code Section 8280 as it read on April 1, 1994.

32 (2) The person made a minimum of four landings utilizing traps in this state in
33 each of three Dungeness crab seasons from November 1, 1984, and April 1, 1994,
34 in his or her name, as documented by landing receipts, from a vessel operated by
35 that person.

36 (3) The person currently does not own a vessel in his or her name.

37 (4) The person has not sold or transferred a vessel otherwise qualifying for a
38 permit under this section.

39 (5) The vessel on which the permit would be placed is not greater in size than
40 the vessel from which the previous landings were made.

41 (6) The vessel is no more than 60 feet in overall length.

42 (7) The vessel was purchased or contracted for construction by the person on or
43 before April 1, 1996.

1 (b) A permit issued under this section is nontransferable, shall not be used for a
2 vessel not owned by that person, and shall be revoked if any of the following
3 circumstances occur:

4 (1) The person fails to renew the permit.

5 (2) The person fails to annually renew his or her commercial fishing license
6 issued pursuant to **Section 7852**.

7 (3) The person is or becomes the owner of another vessel permitted to operate in
8 the Dungeness crab fishery pursuant to this section.

9 **Comment.** Section 32435 restates former Fish and Game Code Section 8280.1(b)(6) without
10 substantive change.

11 **Staff Notes.** (1) Proposed Section 32435 is intended to restate existing Fish and Game Code
12 Section 8280.1(b)(6) to improve the clarity of that paragraph, without changing its substantive
13 effect. The existing paragraph reads as follows:

14 “A person who held a Dungeness crab permit issued under Section 8280 as it read on April 1,
15 1994, who made a minimum of four landings utilizing traps in this state in each of three
16 Dungeness crab seasons in the period between November 1, 1984, and April 1, 1994, in his or her
17 name from a vessel operated by that person as documented by landing receipts, who currently
18 does not own a vessel in his or her name, and who has not sold or transferred a vessel otherwise
19 qualifying for a permit under this section. A permit may be issued under this paragraph for a
20 vessel not greater in size than the vessel from which the previous landings were made, and, in no
21 event, for a vessel of more than 60 feet in overall length, to be placed on a vessel that the person
22 purchases or contracts for construction on or before April 1, 1996. A permit issued under this
23 paragraph shall be nontransferable and shall not be used for a vessel not owned by that person,
24 and shall be revoked if the person (A) fails to renew the permit or annually renew his or her
25 commercial fishing license issued pursuant to Section 7852 or (B) is or becomes the owner of
26 another vessel permitted to operate in the Dungeness crab fishery pursuant to this section.”

27 **The staff invites comment on whether the restatement would cause any substantive**
28 **change in the meaning of Section 8280.1(b)(6).**

29 **§ 32440. Waiver of ownership requirement**

30 32440. The department may waive the requirement under Section 32405, 32410,
31 32415, or 32420 that a person own a commercial fishing vessel that has been
32 registered pursuant to **Section 7881** in each of the 1991–92, 1992–93, and 1993–
33 94 permit years, for one of those required years, if all the following conditions are
34 met:

35 (a) The vessel was registered and used in the California Dungeness crab fishery
36 during the registration year immediately prior to the year for which the waiver is
37 sought.

38 (b) The vessel was registered and used in the California Dungeness crab fishery
39 after the year for which the waiver is sought.

40 (c) The reason for the failure to register in the year for which the waiver is
41 sought was a death, illness, or injury, or other hardship, as determined by the
42 review panel, which prevented the vessel from being registered and operated in the
43 fishery for that registration year.

44 **Comment.** Section 32440 continues former Fish and Game Code Section 8280.1(f) without
45 substantive change.

1 (c) The person purchasing the vessel shall not transfer the permit for use of that
2 vessel in the Dungeness crab fishery to another replacement vessel during the
3 same permit year.

4 **Comment.** Section 32510 continues former Fish and Game Code Section 8280.3(b) without
5 substantive change.

6 **§ 32515. Transfer to replacement vessel of equivalent capacity**

7 32515. (a) The owner of a vessel to whom a Dungeness crab vessel permit has
8 been issued may transfer the permit to a replacement vessel of equivalent capacity,
9 except as specified in this article.

10 (b) Upon notice to the department and payment of the transfer fee specified in
11 **Section 8280.6**, the replacement vessel may be used for the taking and landing of
12 Dungeness crab for any and all of the unexpired portion of the permit year, and the
13 owner of the replacement vessel is eligible for a permit pursuant to **Section 8280.1**
14 for the use of that replacement vessel in subsequent years.

15 **Comment.** Section 32515 continues former Fish and Game Code Section 8280.3(c) without
16 substantive change.

17 **§ 32520. Transfer to replacement vessel of greater capacity**

18 32520. The owner of a permitted vessel may transfer a Dungeness crab vessel
19 permit to a replacement vessel of greater capacity that satisfy either of the
20 following conditions:

21 (a) The replacement vessel was owned by that person on or before November
22 15, 1995, and is no more than 10 feet longer overall than the vessel for which the
23 permit was originally issued.

24 (b) The replacement vessel was purchased after November 15, 1995, and is no
25 more than five feet longer overall than the vessel for which the permit was
26 originally issued.

27 **Comment.** Section 32520 continues former Fish and Game Code Section 8280.3(d) without
28 substantive change.

29 **Staff Notes.** (1) Proposed Section 32520 is intended to restate existing Fish and Game Code
30 Section 8280.3(d) to improve the clarity of that subdivision, without changing its substantive
31 effect. The existing subdivision reads as follows:

32 “The owner of a permitted vessel may transfer the permit to a vessel of greater capacity that
33 was owned by that person on or before November 15, 1995, not to exceed 10 feet longer in length
34 overall than the vessel for which the permit was originally issued or to a vessel of greater capacity
35 purchased after November 15, 1995, not to exceed 5 feet longer in length overall than the vessel
36 for which the permit was originally issued.”

37 **The staff invites comment on whether the restatement would cause any substantive
38 change in the meaning of the subdivision.**

39 (2) Unlike existing Fish and Game Code Sections 8280.3(b) and (c), existing Section 8280.3(d)
40 (which would be continued by proposed Section 32520) does not expressly provide that following
41 the specified permit transfer the owner may use the replacement vessel to take and land
42 Dungeness crab for the unexpired portion of the permit year, nor provide that the owner is
43 eligible for a permit to use that replacement vessel in subsequent years.

44 **The staff invites comment as to whether those provisions should be added to proposed
45 Section 32520.**

1 § 32525. Transfer to replacement vessel not equipped with trawl nets

2 32525. The department may authorize the owner of a permitted vessel to
3 transfer a Dungeness crab vessel permit to a replacement vessel that does not fish
4 with trawl nets, if all of the following conditions are satisfied:

5 (a) The replacement vessel was owned by the owner on or before April 1, 1996.

6 (b) The replacement vessel is more than five feet longer overall than the vessel
7 for which the permit was previously issued.

8 (c) A vessel of a larger size is essential to the owner for participation in a fishery
9 other than a trawl net fishery.

10 (d) The owner held a permit on or before January 1, 1995, for the fishery for
11 which a larger vessel is needed, and has participated in that fishery.

12 (e) The permit for the vessel from which the permit is to be transferred qualified
13 pursuant to **paragraph (1) of subdivision (b) of Section 8280.1.**

14 (f) The vessel to which the permit is to be transferred does not exceed 20 feet
15 longer in length overall than the vessel for which the permit was originally issued,
16 and the vessel to which the permit is to be transferred does not exceed 60 feet in
17 overall length.

18 **Comment.** Section 32525 continues former Fish and Game Code Section 8280.3(e) without
19 substantive change.

20 **Staff Notes.** (1) Proposed Section 32525 is intended to restate existing Fish and Game Code
21 Section 8280.3(e) to improve the clarity of that subdivision, without changing its substantive
22 effect. The existing subdivision reads as follows:

23 “The department may authorize the owner of a permitted vessel to transfer the permit to a
24 replacement vessel that was owned by that person on or before April 1, 1996, that does not fish
25 with trawl nets that is greater than five feet longer in length overall than the vessel for which the
26 permit was originally issued, if all of the following conditions are satisfied:

27 (1) A vessel of a larger size is essential to the owner for participation in another fishery other
28 than a trawl net fishery.

29 (2) The owner held a permit on or before January 1, 1995, for the fishery for which a larger
30 vessel is needed and has participated in that fishery.

31 (3) The permit for the vessel from which the permit is to be transferred qualified pursuant to
32 paragraph (1) of subdivision (b) of Section 8280.1.

33 (4) The vessel to which the permit is to be transferred does not exceed 20 feet longer in length
34 overall than the vessel for which the permit was originally issued and the vessel to which the
35 permit is to be transferred does not exceed 60 feet in overall length.”

36 **The staff invites comment on whether the restatement would cause any substantive
37 change in the meaning of the subdivision.**

38 (2) The introductory language of existing Fish and Game Code Section 8280.3(e) indicates that
39 the Department “may authorize” the transfer of a Dungeness crab vessel permit under specified
40 circumstances. This language does not conform to the introductory language of subdivisions (c)
41 and (d) of Section 8280.3 (which would be continued, respectively, by proposed Sections 32515
42 and 32520), both of which provide that an owner “may transfer” a Dungeness crab vessel permit
43 under different specified circumstances.

44 **The staff invites comment as to whether there is some intended difference in meaning
45 with regard to the introductory language of these provisions, and if not whether it would be
46 problematic to conform the language.**

47 (3) Unlike existing Fish and Game Code Sections 8280.3(b) and (c), existing Section 8280.3(e)
48 does not expressly provide that following the specified permit transfer the owner may use the

1 replacement vessel to take and land Dungeness crab for the unexpired portion of the permit year,
2 nor provide that the owner is eligible for a permit to use that replacement vessel in subsequent
3 years.

4 **The staff invites comment as to whether those provisions should be added to proposed**
5 **Section 32525.**

6 **§ 32530. Restriction on multiple transfers**

7 32530. A transfer of a permit to a larger vessel shall not be allowed more than
8 one time. If a permit is transferred to a larger vessel, any Dungeness crab vessel
9 permit for that permit year or any subsequent permit years for that larger vessel
10 shall not be transferred to another larger vessel. The department shall not
11 thereafter issue a Dungeness crab vessel permit for the use of the original vessel
12 from which the permit was transferred, except that the original vessel may be used
13 to take or land Dungeness crab after that transfer, if its use is authorized pursuant
14 to another Dungeness crab vessel permit subsequently transferred to that vessel
15 pursuant to this paragraph.

16 **Comment.** Section 32530 continues former Fish and Game Code Section 8280.3(f) without
17 substantive change.

18 **§ 32535. Transfer based on serious damage, loss or destruction of permitted vessel**

19 32535. (a) Notwithstanding **subdivision (e) of Section 8280.2**, the owner of a
20 vessel for which a Dungeness crab vessel permit was issued that is lost or
21 destroyed, or suffers serious damage that renders the vessel inoperable, may,
22 during the period of two years after the loss or damage of the vessel for which the
23 permit was originally issued, transfer the permit to another vessel, if all the
24 following conditions are satisfied:

25 (1) The replacement vessel is of equivalent size and capacity of the vessel that
26 was lost or damaged.

27 (2) The permittee at the time of the loss, theft, damage, or destruction of the
28 vessel applies for the transfer.

29 (3) The lost or damaged vessel has a current permit.

30 (4) The owner of the lost or damaged vessel makes assurances in the application
31 that any renewal of the permit that becomes due during the application processing
32 period will be made.

33 (5) The owner of the lost or damaged vessel submits proof that the department
34 may reasonably require to establish the loss or damage of the vessel. Proof of loss
35 or destruction shall be documented by submission of a copy of the report filed
36 with the United States Coast Guard or any other law enforcement or fire agency
37 that investigated the loss. In the case of mechanical breakdown, the request shall
38 include an estimate of the costs to repair the vessel from a marine surveyor or boat
39 repair yard.

40 (6) The department gives written approval of the transfer.

41 (b) The department shall not issue a permit for a replacement vessel pursuant to
42 this paragraph if the lost or damaged vessel was reported lost, stolen, destroyed,

1 mechanically broken down, or damaged for fraudulent purposes.

2 (c) If the permit is not permanently transferred to another vessel owned by the
3 person to whom the vessel permit was originally issued within two years of the
4 loss or damage, the permit shall become void by operation of law.

5 **Comment.** Section 32535 restates former Fish and Game Code Section 8280.3(g)(2) without
6 substantive change.

7 **Staff Notes.** (1) Proposed Section 32535 is intended to restate existing Fish and Game Code
8 Section 8280.3(g)(2) to improve the clarity of that paragraph, without changing its substantive
9 effect. The existing paragraph reads as follows:

10 “Notwithstanding subdivision (e) of Section 8280.2, in the event of loss or destruction of a
11 vessel for which a Dungeness crab vessel permit was issued, or serious damage that renders the
12 vessel inoperable, and upon written approval of the department, the owner of the vessel to whom
13 the permit was issued may retain the permit and may transfer the permit to another vessel of
14 equivalent size and capacity of the vessel that was lost or damaged during the period of two years
15 after the loss or damage of the vessel for which the permit was originally issued. The owner of
16 the lost or damaged vessel shall submit proof that the department may reasonably require to
17 establish the loss or damage of the vessel. Only the permittee at the time of the loss, theft,
18 damage, or destruction of the vessel may apply for the transfer of the vessel permit. Proof of loss
19 or destruction shall be documented by submission of a copy of the report filed with the United
20 States Coast Guard or any other law enforcement or fire agency that investigated the loss. In the
21 case of mechanical breakdown, the request shall include an estimate of the costs to repair the
22 vessel from a marine surveyor or boat repair yard. The department shall not issue a permit for a
23 replacement vessel pursuant to this paragraph if the lost or damaged vessel was reported lost,
24 stolen, destroyed, mechanically broken down, or damaged for fraudulent purposes. The
25 department shall only transfer a permit pursuant to this paragraph if the lost or damaged vessel
26 has a current permit and the owner of the lost or damaged vessel makes assurances in the
27 application that any renewal of the permit that becomes due during the application processing
28 period will be made. If the permit is not permanently transferred to another vessel owned by the
29 person to whom the vessel permit was originally issued within two years of the loss or damage,
30 the permit shall become void by operation of law.”

31 **The staff invites comment on whether the restatement would cause any substantive**
32 **change in the meaning of the subdivision.**

33 (2) Unlike existing Fish and Game Code Sections 8280.3(b) and (c), existing Section
34 8280.3(g)(2) does not expressly provide that following the specified permit transfer the owner
35 may use the replacement vessel to take and land Dungeness crab for the unexpired portion of the
36 permit year, nor provide that the owner is eligible for a permit to use that replacement vessel in
37 subsequent years.

38 **The staff invites comment as to whether those provisions should be added to proposed**
39 **Section 32535.**

40 **§ 32540. Temporary transfer to non-permitted replacement vessel**

41 32540. (a) The owner of a vessel to whom a Dungeness crab vessel permit has
42 been issued, which is seriously damaged, suffers major mechanical breakdown, or
43 is lost or destroyed, as determined by the department and approved by the director,
44 may temporarily transfer the permit to a replacement vessel for which use in the
45 Dungeness crab fishery is not permitted pursuant to this section or **Section 8280.1**
46 if all of the following conditions are satisfied:

47 (1) The vessel from which the permit is transferred has made California

1 Dungeness crab landings with trap gear, which have been documented on
2 department landing receipts.

3 (2) The vessel from which the permit is transferred has had California
4 Dungeness crab landings amounting to not less than 5,000 pounds cumulative for
5 the past two Dungeness crab seasons.

6 (3) The replacement vessel is of equivalent size and capacity of the originally
7 permitted vessel.

8 (4) The replacement vessel is no greater than 10 feet longer in length overall
9 than the vessel from which the permit is transferred.

10 (5) The permittee at the time of the loss, theft, damage, breakdown, or
11 destruction of the vessel applies for the transfer.

12 (6) The owner of the vessel submits proof that the department may reasonably
13 require to establish the existence of the conditions of this section. Proof of loss or
14 destruction shall be documented by submission of a copy of the report filed with
15 the United States Coast Guard or any other law enforcement or fire agency that
16 investigated the loss. In the case of mechanical breakdown, the request shall
17 include an estimate of the costs to repair the vessel from a marine surveyor or boat
18 repair yard.

19 (7) The department gives written approval of the transfer.

20 (c) The transfer shall be for a period of not more than six months during the
21 current permit year.

22 (d) The department shall not issue a permit for a replacement vessel pursuant to
23 this subdivision if the permitted vessel was reported lost, stolen, mechanically
24 broken down, destroyed, or damaged for fraudulent purposes.

25 (e) Upon approval by the director, the owner of a vessel granted a six-month
26 temporary transfer under this section may be granted an additional six-month
27 extension of the temporary transfer.

28 **Comment.** Section 32540 restates former Fish and Game Code Section 8280.3(g)(1) without
29 substantive change.

30 **Staff Notes.** (1) Proposed Section 32540 is intended to restate existing Fish and Game Code
31 Section 8280.3(g)(1) to improve the clarity of that paragraph, without changing its substantive
32 effect. The existing paragraph reads as follows:

33 “Upon the written approval of the department, the owner of a vessel to whom the Dungeness
34 crab vessel permit has been issued, which has California Dungeness crab landings made with trap
35 gear documented on department landing receipts and which has had California Dungeness crab
36 landings amounting to not less than 5,000 pounds cumulative for the past two Dungeness crab
37 seasons, may temporarily transfer the permit to a replacement vessel for which use in the
38 Dungeness crab fishery is not permitted pursuant to this section or Section 8280.1 that is of
39 equivalent size and capacity of the originally permitted vessel, no greater than 10 feet longer in
40 length overall than the vessel from which the permit is transferred, for a period of not more than
41 six months during the current permit year if the vessel for which the permit was issued is
42 seriously damaged, suffers major mechanical breakdown, or is lost or destroyed, as determined by
43 the department, upon approval of the director. The owner of the vessel shall submit proof that the
44 department may reasonably require to establish the existence of the conditions of this paragraph.
45 Only the permittee at the time of the loss, theft, damage, breakdown, or destruction of the vessel
46 may apply for the transfer of the vessel permit. Proof of loss or destruction shall be documented

1 by submission of a copy of the report filed with the United States Coast Guard or any other law
2 enforcement or fire agency that investigated the loss. In the case of mechanical breakdown, the
3 request shall include an estimate of the costs to repair the vessel from a marine surveyor or boat
4 repair yard. The department shall not issue a permit for a replacement vessel pursuant to this
5 subdivision if the permitted vessel was reported lost, stolen, mechanically broken down,
6 destroyed, or damaged for fraudulent purposes. Upon approval by the director, the owner of a
7 vessel granted a six-month temporary transfer under this section may be granted an additional six-
8 month extension of the temporary transfer.”

9 **The staff invites comment on whether the restatement would cause any substantive**
10 **change in the meaning of the subdivision.**

11 (2) Unlike existing Fish and Game Code Sections 8280.3(b) and (c), existing Section
12 8280.3(g)(1) does not expressly provide that following the specified permit transfer the owner
13 may use the replacement vessel to take and land Dungeness crab for the unexpired portion of the
14 permit year, nor provide that the owner is eligible for a permit to use that replacement vessel in
15 subsequent years.

16 **The staff invites comment as to whether those provisions should be added to proposed**
17 **Section 32540.**

18 **§ 32545. Retention of permit upon sale of permitted vessel**

19 32545. (a) Upon written approval of the department, the owner of a vessel to
20 whom the Dungeness crab vessel permit has been issued may retain that permit
21 upon the sale of that permitted vessel, for the purpose of transferring the permit to
22 another vessel to be purchased by that individual within one year of the time of
23 sale of the vessel for which the permit was originally issued, if the requirements of
24 this article are satisfied, including the payment of transfer fees.

25 (b) If the permit is not transferred to a new vessel owned by the person to whom
26 the vessel permit was originally issued within one year of the sale of the vessel for
27 which it was originally issued, or if the person does not retain ownership of the
28 new vessel to which the permit is transferred for a period of not less than one year,
29 the permit shall become void by operation of law.

30 **Comment.** Section 32545 continues former Fish and Game Code Section 8280.3(h) without
31 substantive change.

32 **§ 32550. Death or incapacity of permitholder**

33 32550. (a) In the event of the death or incapacity of a permitholder, the permit
34 shall be transferred, upon application, to the heirs or assigns, or to the working
35 partner, of the permitholder, together with the transfer of the vessel for which the
36 permit was issued.

37 (b) The new owner may continue to operate the vessel under the permit, renew
38 the permit, or transfer the permit, upon sale of the vessel pursuant to Section
39 32510.

40 (c) The estate of the holder of a transferable Dungeness crab vessel permit may
41 renew that permit as provided for in statute, if needed to keep it valid, or may
42 transfer that permit pursuant to these regulations, no later than two years from the
43 date of death of the permitholder as listed on the death certificate.

44 **Comment.** Section 32550 continues former Fish and Game Code Section 8280.3(i) without

1 substantive change.

2 **§ 32555. Fees for transfer**

3 32555. The department shall charge a nonrefundable fee of two hundred dollars
4 (\$200) for each transfer of a permit authorized pursuant to this article, for the
5 reasonable regulatory costs of the department.

6 **Comment.** Section 32555 continues former Fish and Game Code Section 8280.6(b) without
7 substantive change.

8 **§ 32560. Inoperative date of article**

9 32560. This article shall become inoperative on April 1, 2019, and, as of January
10 1, 2020, is repealed, unless a later enacted statute that becomes operative on or
11 before January 1, 2020, deletes or extends the date on which this article becomes
12 inoperative or is repealed.

13 **Comment.** Section 32560 continues former Fish and Game Code Section 8280.3(j) and
14 8280.6(c) without substantive change.

15 **Article 4. Miscellaneous Provisions**

16 **§ 32600. Legislative declaration**

17 32600. (a) The Legislature finds and declares that the Dungeness crab fishery is
18 important to the state because it provides a valuable food product, employment for
19 those persons engaged in the fishery, and economic benefits to the coastal
20 communities of the state.

21 (b) The Legislature further finds that, in order to protect the Dungeness crab
22 fishery, it is necessary to limit the number of vessels participating in that fishery to
23 take Dungeness crab and it may be necessary to limit the quantity and capacity of
24 the fishing gear used on each vessel to take Dungeness crab.

25 (c) The Legislature further finds and declares that to limit the number of vessels
26 in the Dungeness crab fishery, it is necessary to require that the owner of each
27 vessel participating in the fishery obtain and possess a permit for that vessel and
28 that the initial issuance of permits shall be limited to those persons owning vessels
29 qualifying under **Section 8280.1**.

30 **Comment.** Section 32600 continues former Fish and Game Code Section 8280 without
31 substantive change.

32 **§ 32605. Location where permits valid**

33 32605. Dungeness crab vessel permits are valid only in waters of the state and in
34 the Pacific Ocean in federal waters south of the border with Oregon.

35 **Comment.** Section 32605 continues former Fish and Game Code Section 8280.9 without
36 substantive change.

1 inches, inside diameter, located on any outside wall of the rearmost chamber of the
2 crab trap and shall be located so that at least one-half of the opening is in the upper
3 half of the trap. Rock crab traps constructed of other material shall have at least
4 two rigid circular openings of not less than 3 1/4 inches, inside diameter, on the
5 top or side of the rearmost chamber of the trap. If both of the openings are located
6 on the side of the trap, at least one of the openings shall be located so that at least
7 one-half of the opening is in the upper half of the trap. No rigid circular opening,
8 as required, shall extend more than 1/2 inch beyond the plane of the wall side or
9 top of the trap in which it is located, and it shall be clearly accessible to any crab
10 which may be in the trap.

11 (c) Subject to **Article 6 (commencing with Section 8275) of Chapter 2**,
12 Dungeness crab may be taken incidentally with a rock crab trap used pursuant to
13 this subdivision to take rock crab, provided that the incidental taking occurs only
14 during the season when it is lawful to take both species. A Dungeness crab, taken
15 incidentally with a rock crab trap, which does not comply with **Article 6**
16 **(commencing with Section 8275) of Chapter 2**, shall be immediately returned to
17 the waters from which it was taken.

18 (d) A person shall not possess any lobster aboard a vessel while the vessel is
19 being used pursuant to this subdivision to take rock crab.

20 **Comment.** Section 32655 continues former Fish and Game Code Section 9011(b) without
21 substantive change.

22 § 32660. Incidental take

23 32660. (a) Except as provided in **Section 9011** or subdivision (b), any species
24 other than rock crab taken incidentally in a crab trap being used to take rock crab
25 shall be immediately released back to the water.

26 (b) The following species may be taken incidentally in crab traps being used to
27 take rock crab, under a permit issued pursuant to **Section 9001 in Districts 19 and**
28 **118.5:**

29 (1) Kellet's whelk.

30 (2) Octopus.

31 (3) Crabs other than of the genus *Cancer*, except as provided in **Section 9011**.

32 **Comment.** Section 32660 continues former Fish and Game Code Section 8284(b) and (c)
33 without substantive change.

34 TITLE 3. LICENSE SUSPENSION

35 § 32700. Revocation or suspension of license

36 32700. (d) Notwithstanding **Sections 12000, 12001, and 12002**, the commercial
37 fishing license of the master of a vessel may be revoked or suspended by the
38 commission, when requested by the department, for a period not to exceed one
39 year, upon the second conviction in three years of the master or the master's agent,

1 servant, employee, or any other person acting under the master's direction or
2 control, for a violation of any provision of this part.

3 (b) A master's license shall not be revoked unless both the first and second
4 convictions are for a violation by the master or a violation occurring when the
5 person convicted was acting as the master's agent, servant, employee, or acting
6 under the master's direction or control.

7 (c) The master of a vessel is the person on board the vessel who is in charge of
8 the vessel.

9 **Comment.** Section 32700 continues the part of former Fish and Game Code Section
10 12022.8(d)-(f) applicable to the provisions of this part, without substantive change.

11 PART 5. CRAYFISH

12 TITLE 1. CRAYFISH GENERALLY

13 § 32750. Crustacean

14 32750. For the purposes of Part 6 (commencing with Section 32850), a crayfish
15 is a crustacean.

16 **Comment.** Section 32750 is new.

17  **Staff Note.** Based on staff research, it appears that a crayfish is a crustacean. **The staff**
18 **invites comment on whether that is correct.**

19 § 32755. Provisions not exclusive

20 32755. The provisions of this part are not intended to be exclusive. Other
21 provisions that govern crayfish include, but are not limited to, the following
22 provisions:

23 (a) **Section 2116.**

24 (b) **Section 15005.**

25 **Comment.** Section 32755 is new.

26 TITLE 2. COMMERCIAL PROVISIONS

27 § 32800. Application of title

28 32800. For purposes of **Section 7600**, the provisions in this title are commercial
29 provisions.

30 **Comment.** Section 32800 is new. It is added for drafting convenience.

31 § 32805. Take

32 32805. The taking of crayfish shall be subject to regulations prescribed by the
33 commission.

34 **Comment.** Section 32805 continues former Fish and Game Code Section 8490 without
35 substantive change.

- 1 (a) **Section 1003.**
- 2 (b) **Section 2271.**
- 3 (c) **Section 7891.**
- 4 (d) **Section 9000.**
- 5 (e) **Section 9001.**
- 6 (f) **Section 9001.7.**
- 7 (g) **Section 9006.**
- 8 (h) **Section 10060.**
- 9 (i) **Section 10664.**
- 10 (j) **Section 10667.**
- 11 (k) **Section 15007.**
- 12 **Comment.** Section 32850 is new.

13 § **32855. Use as bait**
14 32855. A crustacean may be used for bait, or released in the same waters from
15 which it was taken.
16 **Comment.** Section 32855 continues the part of former Fish and Game Code Section 5505
17 applicable to crustaceans without substantive change.

18 TITLE 2. COMMERCIAL PROVISIONS

19 § **32900. Application of title**
20 32900. For purposes of **Section 7600**, the provisions in this title are commercial
21 provisions.
22 **Comment.** Section 32900 is new. It is added for drafting convenience.

23 § **32905. Take with powered equipment**
24 32905. (a) Powered equipment of such design as may be prescribed by the
25 commission may be used to take crustaceans under a revocable permit issued by
26 the department and under regulations adopted by the commission.
27 (b) Taking of lobster or crabs under this section is subject to **Article 5**
28 **(commencing with Section 8250) and Article 6 (commencing with Section**
29 **8275) of Chapter 2 of Part 3 of Division 6.**
30 **Comment.** Section 32905 continues the part of former Fish and Game Code Section 9053
31 applicable to 5s without substantive change.

32 PART 7. KRILL

33 TITLE 1. KRILL GENERALLY

34 § **32950. Crustacean**
35 32950. For the purposes of Part 6 (commencing with Section 32850), krill is a
36 crustacean.

1 **Comment.** Section 32950 is new.

2  **Staff Note.** Based on staff research, it appears that krill is a crustacean. **The staff invites**
3 **comment on whether that is correct.**

4 TITLE 2. COMMERCIAL PROVISIONS

5 § 33000. Application of title

6 33000. For purposes of **Section 7600**, the provisions in this title are commercial
7 provisions.

8 **Comment.** Section 33000 is new. It is added for drafting convenience.

9 § 33005. Take

10 33005. (a) It is unlawful to take or land krill of any species of euphausiid for any
11 purpose, except scientific research pursuant to regulations adopted by the
12 commission.

13 (b) This section applies to krill taken in the waters of the state and up to 200
14 miles offshore, as long as federal law does not regulate the taking of krill.

15 **Comment.** Section 33005 continues former Fish and Game Code Section 8510 without
16 substantive change.

17 PART 8. LOBSTER

18 TITLE 1. LOBSTER GENERALLY

19 § 33100. Crustacean

20 33100. For the purposes of Part 6 (commencing with Section 32850), a lobster is
21 a crustacean.

22 **Comment.** Section 33100 is new.

23  **Staff Note.** Based on staff research, it appears that a lobster is a crustacean. **The staff invites**
24 **comment on whether that is correct.**

25 § 33105. Provisions not exclusive

26 33105. The provisions of this part are not intended to be exclusive. Other
27 provisions that govern lobster include, but are not limited to, the following
28 provisions:

29 (a) **Section 8665.**

30 (b) **Section 9001.**

31 (c) **Section 9001.7.**

32 (d) **Section 9006.**

33 (e) **Section 10664.**

34 (d) **Section 10667.**

35 **Comment.** Section 33105 is new.

1 **§ 33110. Take of spiny lobster**

2 33110. Spiny lobster may not be taken under a sport fishing license, except by
3 use of a hoop net or by hand.

4 **Comment.** Section 33110 continues former Fish and Game Code Section 7256 without
5 substantive change.

6 **§ 33115. Importing of spiny lobster**

7 33115. (a) Spiny lobsters may be imported into California until the twenty-sixth
8 day after the close of the California season.

9 (b) Lobsters imported into California and lobsters legally taken in California
10 during the open season prescribed in this code may be possessed and sold during
11 the closed season, subject to the regulations of the commission.

12 (c) The cost of inspection and marking, under the regulations of the commission,
13 shall be paid by the importer or owner of the lobsters.

14 **Comment.** Section 33115 continues former Fish and Game Code Section 2365 without
15 substantive change.

16 **TITLE 2. COMMERCIAL PROVISIONS**

17 **CHAPTER 1. PRELIMINARY PROVISIONS**

18 **§ 33150. Application of title**

19 33150. For purposes of **Section 7600**, the provisions in this title are commercial
20 provisions.

21 **Comment.** Section 33150 is new. It is added for drafting convenience.

22 **CHAPTER 2. PERMIT**

23 **§ 33200. Required permit**

24 33200. (a) Lobsters shall not be taken for a commercial purpose except under a
25 valid lobster permit issued to that person that has not been suspended or revoked,
26 and subject to regulations adopted by the commission.

27 (b) Every person who takes, assists in taking, possesses, or transports a lobster
28 for a commercial purpose while on any boat, barge, or vessel, or who uses or
29 operates or assists in using or operating any boat, net, trap, line, or other appliance
30 to take a lobster for a commercial purpose, shall have a valid lobster permit.

31 (c) The permit fee for a lobster permit is two hundred sixty-five dollars (\$265).

32 (d) The fee for a lobster crewmember permit is one hundred twenty-five dollars
33 (\$125).

34 (e) For the purposes of this section, possession of more than three times the
35 sport bag limit of lobster is prima facie evidence that the lobster in possession was
36 taken for a commercial purpose.

1 (f) Notwithstanding **Section 12002**, the punishment for a violation of this
2 section is a fine of not less than five thousand dollars (\$5,000) nor more than ten
3 thousand dollars (\$10,000), imprisonment in a county jail not to exceed six
4 months, or both that fine and imprisonment.

5 (g) For conviction of a violation of this section, the court may order forfeiture of
6 any device or apparatus that is used in committing the offense, including, but not
7 limited to, any vehicle used or intended for use in committing the offense.

8 **Comment.** Subdivisions (a) through (e) of Section 33200 continue former Fish and Game
9 Code Section 8254 without substantive change.

10 Subdivision (f) continues former Fish and Game Code Section 12006(a)(2) without substantive
11 change.

12 Subdivision (g) continues the part of former Fish and Game Code Section 12157(c)(1)(C)
13 applicable to lobster without substantive change.

14  **Staff Note.** In a criminal prosecution for unlawful take of lobster under Section 8254, the
15 prima facie evidence rule in Section 8254(e) (which would be continued by proposed Section
16 33250(e)) could be held unconstitutional, based on authority holding that a presumption in a
17 criminal statute may not relieve the prosecution of its burden of proving each element of a
18 charged offense beyond a reasonable doubt. See *People v. Roder*, 33 Cal. 3d 491, 658 P.2d 1302,
19 189 Cal. Rptr. 501 (1983).

20 On the other hand, application of the prima facie evidence rule might be appropriate in a civil
21 or licensure proceeding based on a violation of Section 8254.

22 **The staff is conducting further research on this issue.**

23 **§ 33205. Display of permit number**

24 33205. The permit number of the person owning or in command of any boat
25 used to take lobster shall be visibly displayed on both sides of the boat, in 10-inch
26 black numbers, one inch wide, on a white background.

27 **Comment.** Section 33205 continues former Fish and Game Code Section 8257 without
28 substantive change.

29 **§ 33210. Limit on number of permits issued**

30 33210. Whenever it is necessary to prevent overutilization or to ensure efficient
31 and economic operation of the fishery, the commission may limit the number of
32 permits that may be issued pursuant to **Section 8254**. As it determines appropriate
33 to protect the resource, the commission may limit the number of permits on a
34 statewide basis or within selected geographical areas.

35 **Comment.** Section 33210 continues former Fish and Game Code Section 8259 without
36 substantive change.

37 **§ 33215. Suspension of permit pending criminal proceeding**

38 33215. (a) When a complaint has been filed in a court of competent jurisdiction
39 charging a holder of a commercial lobster permit with a violation of **Section 8251**
40 **or 8252**, and no disposition of the complaint has occurred within 90 days after it
41 has been filed in the court, the department may suspend the commercial lobster
42 permit of the person.

43 (b) The permitholder whose permit was suspended under this section may,

1 within 10 days after the receipt of the suspension notice from the department,
2 request a hearing, and, within 20 days after the request has been made, a hearing
3 shall be held by the commission. A decision shall be made within a reasonable
4 time on whether the suspension of the permit shall be terminated or continued
5 until the disposition of the complaint by the court.

6 (c) In determining whether to terminate or continue the suspension of the permit,
7 the commission shall consider whether or not the violation could have a
8 detrimental effect on the resources, and whether or not a continued suspension of
9 the permit is in the best public interest.

10 (d) The commission shall also make a finding whether there is sufficient
11 evidence that a violation has occurred. A failure to make a finding that there is
12 sufficient evidence that a violation has occurred, or a finding that there is
13 insufficient evidence of the violation, shall terminate the suspension of the permit
14 under this section.

15 (e) If a permit holder whose permit is suspended pursuant to this section is
16 subsequently acquitted of the charges against him or her in court, or those charges
17 are dismissed, the suspension of the permit is automatically terminated.

18 **Comment.** Section 33215 continues the first six sentences of former Fish and Game Code
19 Section 8254.7 without substantive change.

20 CHAPTER 3. TAKE

21 § 33250. Season for take

22 33250. (a) Spiny lobster may be taken only between the first Wednesday in
23 October and the first Wednesday after March 15.

24 (b) Lobster traps may be set and baited 24 hours in advance of the opening date
25 of the lobster season if no other attempt is made to take or possess the lobsters.

26 **Comment.** Section 33250 continues former Fish and Game Code Section 8251 without
27 substantive change.

28 § 33255. Size limitation

29 33255. (a) No spiny lobster less than three and one-quarter inches in length
30 measured in a straight line from the rear edge of the eye socket to the rear edge of
31 the body shell, both points to be on the midline of the back, may be taken,
32 possessed, purchased, or sold.

33 (b) Every person taking spiny lobster shall carry a measuring device, and shall
34 measure any lobster immediately on removal from a trap. Any removed lobster
35 that is found to be undersized shall be returned to the water immediately.

36 **Comment.** Section 33255 continues former Fish and Game Code Section 8252 without
37 substantive change.

1 § 33260. Possession or landing on vessel

2 33260. Lobster may be possessed aboard or landed from any vessel on which
3 finfish are present, if every person aboard the vessel has a valid lobster permit that
4 has not been suspended or revoked, and complies with **Article 5 of Chapter 2 (of**
5 **Part 3 of Division 6) of the Fish and Game Code, Article 1 of Chapter 4**
6 **Article 5 of Chapter 2 of the Fish and Game Code of the Fish and Game**
7 **Code**, and the regulations adopted pursuant to any of those provisions.

8 **Comment.** Section 33260 continues former Fish and Game Code Section 9001.7(k) without
9 substantive change.

10 § 33265. Filing of criminal complaint

11 33265. No complaint shall be filed in a court charging a commercial lobster
12 permitholder with a violation of **Section 8251 or 8252** unless evidence supporting
13 the charge has been reviewed by the appropriate county or city prosecuting
14 agency, and a criminal complaint has been issued by that agency.

15 **Comment.** Section 33265 continues the seventh sentence of former Fish and Game Code
16 Section 8254.7 without substantive change.

17 CHAPTER 4. LOBSTER TRAPS

18 § 33300. Use of trap

19 33300. Subject to **Article 5 (commencing with Section 8250) of Chapter 2** and
20 **Article 1 (commencing with Section 9000) of Chapter 4**, a lobster trap, as
21 described in **Section 9010**, may be used to take lobster under a lobster permit
22 issued pursuant to **Section 8254**.

23 **Comment.** Section 33300 combines and restates former Fish and Game Code Sections
24 8250.5(a) and 9010(a) without substantive change.

25 **Staff Note.** Proposed Section 33300 is intended to combine and restate existing Fish and
26 Game Code Sections 8250.5(a) and 9010(a) to improve the clarity of those provisions, without
27 changing their substantive effect. The existing provisions read as follows:

28 “8250.5. (a) Subject to this article and Article 1 (commencing with Section 9000) of Chapter 4,
29 a lobster trap, as described in Section 9010, may be used to take lobster for commercial purposes
30 under a lobster permit issued pursuant to Section 8254.

31 9010. (a) Subject to Article 5 (commencing with Section 8250) of Chapter 2, spiny lobster may
32 be taken with lobster traps under a lobster permit issued pursuant to Section 8254.”

33 **The staff invites comment on whether the combining and restatement of these two**
34 **provisions would cause any substantive change in the meaning of either.**

35 § 33305. Construction of trap

36 33305. (a) A wire lobster trap shall be built of rectangular wire mesh, with
37 inside mesh measurement not less than 1 1/2 inches by 3 1/2 inches, the 3 1/2-inch
38 measurement to be parallel to the floor of the trap. A wire lobster trap shall be
39 fitted with at least one rigid rectangular escape gap with an inside vertical
40 measurement not less than 2 3/8 inches at all points, and an inside horizontal

1 measurement of not less than 11 1/2 inches at all points. The horizontal sides of
2 the escape gap shall be located parallel to, and the escape gap shall be located
3 within 2 3/8 inches of, the floor on any outside wall of the rearmost chamber of
4 the lobster trap. The escape gap shall be clearly accessible to the lobsters.

5 (b) Notwithstanding subdivision (a), wire may be used to hold the escape gap in
6 place that reduces the inside vertical or horizontal measurement of the escape gap
7 specified in subdivision (a), but only if all of the following requirements are met:

8 (1) The overall diameter of the wire, including any coating on the wire, shall
9 measure less than 0.176 inches in diameter (the diameter of 7 SWG gauge wire
10 using the Standard Wire Gauge (SWG) standard of measurement).

11 (2) A maximum of one wire wrap shall be located on each vertical side of the
12 escape gap.

13 (3) A maximum of two wire wraps shall be located on the bottom horizontal side
14 of the escape gap.

15 (4) Wire shall not be used on the top horizontal side of the escape gap.

16 (5) Each wire shall be tightly wrapped against the inside surface of the escape
17 gap and shall not pass over the inside surface more than once. As used in this
18 paragraph, “tightly wrapped” means no space exists at any point between the wire
19 and the inside surface of the escape gap.

20 (c) A lobster trap constructed of lath or other material shall have an opening to
21 allow a means of escape along the full length of one side of the rearmost chamber.
22 The escape opening shall be of a spacing of not less than 2 3/8 inches, and the
23 spacing shall be located parallel to, and within 2 3/8 inches of, the floor of the
24 lobster trap.

25 **Comment.** Section 33305 continues former Fish and Game Code Section 9010(c)-(e) without
26 substantive change.

27 **§ 33310. Locations where traps may be used**

28 33310. (a) Lobster traps may be used to take spiny lobster in Districts **18, 19,**
29 **20A, and those portions of District 20** lying on the southerly side of Santa
30 Catalina Island between Southeast Rock and China Point.

31 (b) Notwithstanding subdivision (a), or **Sections 8660 and 8665**, lobster traps
32 may not be used within 75 feet of any private pier, wharf, jetty, breakwater, or
33 dock.

34 **Comment.** Subdivision (a) of Section 33310 continues former Fish and Game Code Section
35 8258 without substantive change.

36 Subdivision (b) continues former Fish and Game Code Section 9010(b) without substantive
37 change.

38 **Staff Note.** Existing Fish and Game Code Section 9010(b) (which would be continued by
39 proposed Section 33310(b)), although not expressly referencing existing Fish and Game Code
40 Section 8258 (which would be continued by proposed Section 33310(a)), appears to specify a
41 blanket restriction on where lobster traps may otherwise be used to take lobster. Proposed Section
42 33310(b) would therefore make express that the authorization to use lobster traps provided by
43 existing Section 9010(b) is subject to the restriction in existing Section 8258.

44 **The staff invites comment on whether proposed Section 33310 accurately reconciles the**

1 **intended interrelationship between existing Sections 8258 and 9010(b).**

2 **§ 33315. Incidental take of other species**

3 33315. The following species may be taken incidentally in lobster traps being
4 fished under the authority of a lobster permit issued pursuant to **Section 8254**, and
5 any other species taken incidentally shall be immediately released back to the
6 water:

7 (a) Crab, other than Dungeness crab.

8 (b) Kelleys' whelk.

9 (c) Octopus.

10 **Comment.** Section 33315 continues former Fish and Game Code Section 8250.5(b) without
11 substantive change.

12 **CHAPTER 5. OTHER PROHIBITIONS**

13 **§ 33350. Prohibition on sale of lobsters taken while skin diving**

14 33350. Spiny lobsters taken by a person engaged in the activity commonly
15 known as skin diving, or by a person using self-contained underwater breathing
16 apparatus, shall not be sold.

17 **Comment.** Section 33350 continues former Fish and Game Code Section 8250.5(c) without
18 substantive change.

19 **§ 33355. Preserving**

20 33355. (a) It is unlawful to pickle, can, or otherwise preserve a spiny lobster.

21 (b) Notwithstanding subdivision (a), a spiny lobster may be preserved by
22 freezing.

23 (c) A spiny lobster may be cooked for consumption in the fresh state.

24 **Comment.** Section 33355 continues former Fish and Game Code Section 8253 without
25 substantive change.

26 **PART 9. MOLLUSKS**

27 **TITLE 1. MOLLUSKS GENERALLY**

28 **CHAPTER 1. PRELIMINARY PROVISIONS**

29 **§ 33400. Provisions not exclusive**

30 33400. The provisions of this part are not intended to be exclusive. Other
31 provisions that govern mollusks include, but are not limited to, the following
32 provisions:

33 (a) **Section 1003.**

34 (b) **Section 1583.**

35 (c) **Section 2271.**

1 (d) **Section 2345.**

2 (e) **Section 7891.**

3 (f) **Section 9000.**

4 (g) **Section 9001.**

5 (h) **Section 10660.**

6 (i) **Section 10664.**

7 (j) **Section 10666.**

8 (k) **Section 10667.**

9 (l) **Section 15005.**

10 (m) **Section 15007.**

11 **Comment.** Section 33400 is new.

12 **§ 33405. Use as bait**

13 33405. A mollusk may be used for bait, or released in the same waters from
14 which it was taken.

15 **Comment.** Section 33405 continues the part of former Fish and Game Code Section 5505
16 applicable to mollusks without substantive change.

17 **§ 33410. Take with powered equipment**

18 33410. Powered equipment of such design as may be prescribed by the
19 commission may be used to take mollusks under a revocable permit issued by the
20 department and under regulations adopted by the commission.

21 **Comment.** Section 33410 continues the part of former Fish and Game Code Section 9053
22 applicable to mollusks without substantive change.

23 **CHAPTER 2. MOLLUSK PURIFICATION**

24 **§ 33450. Specified districts**

25 33450. Notwithstanding **Sections 5670, 5672, 8341, and 9050**, native and
26 nonnative mollusks may be taken in **Districts 12 and 13** and moved to other areas
27 to be purified for human consumption under rules and regulations that may be
28 established by the commission. The regulations may include, but are not limited
29 to, bag limits, methods of harvest, and provisions for public use. Mollusks taken
30 under this section shall not be used for human consumption unless such use is
31 approved by the State Department of Public Health.

32 **Comment.** Section 33450 continues former Fish and Game Code Section 5700 without
33 substantive change.

34 See also Health & Safety Code § 131052(6) (State Department of Public Health succeeds to
35 and is vested with all the statutory duties, powers, purposes, responsibilities, and jurisdiction of
36 the former State Department of Health Services referred to in former Fish and Game Code
37 Section 5700).

1 shall be commenced within 30 days, and completed within three months of the
2 filing of an application by an aquaculturist.

3 **Comment.** Subdivision (a) of Section 33500 combines and continues former Fish and Game
4 Code Sections 5669 and 5671 without substantive change. See also Health & Safety Code
5 § 131052(6) (State Department of Public Health succeeds to and is vested with all the statutory
6 duties, powers, purposes, responsibilities, and jurisdiction of the former State Department of
7 Health Services referred to in former Fish and Game Code Section 5671).

8 Subdivision (b) continues former Fish and Game Code Section 5675 without substantive
9 change.

10  **Staff Note.** Existing Fish and Game Code Section 5675 (which would be continued by
11 proposed Section 33500(b)) requires a specified examination to be completed “within three
12 months of the filing of an application by an aquaculturist.” However, neither the section nor the
13 article in which it appears provides any detail about this application.

14 **The staff invites comment on the intended meaning of this reference in existing Section**
15 **5675.**

16 **§ 33505. Prohibited take**

17 33505. It is unlawful to take shellfish used or intended to be used for human
18 consumption from any area from which it has been determined, as provided in this
19 chapter, that the taking of shellfish does or may constitute a menace to the lives or
20 health of human beings.

21 **Comment.** Section 33505 combines and continues former Fish and Game Code Section 5670
22 and the second paragraph of former Fish and Game Code Section 5672 without substantive
23 change.

24 **§ 33510. Notice of contamination**

25 33510. (a) If the State Department of Public Health determines that an area from
26 which any shellfish may be taken is or may be subject to sewage contamination,
27 and that the taking of shellfish from that area does or may constitute a menace to
28 the lives or health of human beings, that agency shall ascertain as accurately as it
29 can the bounds of the contamination, and shall post notices on or in the area
30 describing its bounds and prohibiting the taking of shellfish from the area.

31 (b) The taking of shellfish from the area is unlawful after the completion of the
32 publication of the notices as prescribed in this article.

33 (c) The fact of posting the notices shall be published once a week for four
34 successive weeks in a newspaper of general circulation published in the county in
35 which the contaminated area is located. If no newspaper of general circulation is
36 published in the county, the fact of the posting shall be published once a week for
37 four successive weeks in a newspaper of general circulation published in an
38 adjoining county.

39 **Comment.** Subdivision (a) of Section 33510 continues the first paragraph of former Fish and
40 Game Code Section 5672 without substantive change.

41 Subdivision (b) continues former Fish and Game Code Section 5673 without substantive
42 change.

1 **§ 33515. Enforcement**

2 33515. The State Department of Public Health shall enforce the provisions of
3 this chapter, and for that purpose the inspectors and employees of that agency may
4 at any time enter public or private property where shellfish may be located.

5 **Comment.** Section 33515 continues former Fish and Game Code Section 5674 without
6 substantive change.

7 See also Health & Safety Code § 131052(6) (State Department of Public Health succeeds to
8 and is vested with all the statutory duties, powers, purposes, responsibilities, and jurisdiction of
9 the former State Department of Health Services referred to in former Fish and Game Code
10 Section 5674).

11 **TITLE 2. COMMERCIAL PROVISIONS [RESERVED]**

12 **PART 10. MUSSELS**

13 **TITLE 1. MUSSELS GENERALLY**

14 **§ 33600. Mollusk**

15 33600. For the purposes of Title 9 (commencing with Section 33400), a mussel
16 is a mollusk.

17 **Comment.** Section 33600 is new.

18  **Staff Note.** Based on staff research, it appears that a mussel is a mollusk. **The staff invites**
19 **comment on whether that is correct.**

20 **§ 33605. Provisions not exclusive**

21 33605. The provisions of this part are not intended to be exclusive. Other
22 provisions that govern mussels include, but are not limited to, **Section 8597.**

23 **Comment.** Section 33605 is new.

24 **TITLE 2. DREISSENID MUSSELS**

25 **CHAPTER 1. MANAGEMENT BY DEPARTMENT**

26 **§ 33650. General prohibition**

27 33650. Except as authorized by the department, a person shall not possess,
28 import, ship, or transport in the state, or place, plant, or cause to be placed or
29 planted in any water within the state, dreissenid mussels.

30 **Comment.** Section 33650 continues former Fish and Game Code Section 2301(a)(1) without
31 change.

32 **§ 33655. Report of discovery by any entity**

33 33655. Any entity that discovers dreissenid mussels within this state shall
34 immediately report the discovery to the department.

1 **Comment.** Section 33655 continues former Fish and Game Code Section 2301(e) without
2 change.

3 **§ 33660. Authority of department to inspect**

4 33660. The director or his or her designee may do all of the following:

5 (a) Conduct inspections of conveyances, including vehicles, boats and other
6 watercraft, containers, and trailers, that may carry or contain adult or larval
7 dreissenid mussels.

8 (b) Temporarily stop conveyances that may carry or contain adult or larval
9 dreissenid mussels on any roadway or waterway, in order to conduct inspections.

10 (c) Order that areas in a conveyance that contain water be drained, dried, or
11 decontaminated pursuant to procedures approved by the department. An action
12 undertaken pursuant to this subdivision involving the use of chemicals other than
13 salt or hot water to decontaminate a conveyance or a facility is subject to Division
14 13 (commencing with Section 21000) of the Public Resources Code.

15 (d) Impound or quarantine conveyances in locations designated by the
16 department for up to five days or the period of time necessary to ensure that
17 dreissenid mussels can no longer live on or in the conveyance.

18 (e) Conduct inspections of waters of the state and facilities located within waters
19 of the state that may contain dreissenid mussels. If dreissenid mussels are detected
20 or may be present, the director or his or her designee may order the affected waters
21 or facilities closed to conveyances or otherwise restrict access to the affected
22 waters or facilities, and shall order that conveyances removed from, or introduced
23 to, the affected waters or facilities be inspected, quarantined, or disinfected in a
24 manner and for a duration necessary to detect and prevent the spread of dreissenid
25 mussels within the state.

26 **Comment.** Section 33660 combines and continues former Fish and Game Code Section
27 2301(a)(2)(A) through (D)(i), and (c)(2), without substantive change.

28 **§ 33665. Restricted access to designated areas**

29 33665. (a) For the purpose of implementing subdivision (e) of Section 33660,
30 the director or his or her designee shall order the closure or quarantine of, or
31 restrict access to, these waters, areas, or facilities in a manner and duration
32 necessary to detect and prevent the spread of dreissenid mussels within the state.

33 (b) No closure, quarantine, or restriction shall be authorized by the director or
34 his or her designee without the concurrence of the Secretary of the Natural
35 Resources Agency.

36 (c) If a closure lasts longer than seven days, the department shall update the
37 operator of the affected facility every 10 days on efforts to address the dreissenid
38 infestation. The department shall provide these updates in writing and also post
39 these updates on the department's Internet Web site in an easily accessible
40 manner.

1 (d) The department shall develop procedures to ensure proper notification of
2 affected local and federal agencies, and, as appropriate, the Department of Water
3 Resources, the Department of Parks and Recreation, and the State Lands
4 Commission in the event of a decision to close, quarantine, or restrict a facility
5 pursuant to this paragraph. These procedures shall include the reasons for the
6 closure, quarantine, or restriction, and methods for providing updated information
7 to those affected. These procedures shall also include protocols for the posting of
8 the notifications on the department's Internet Web site required by subdivision (c).

9 (e) When deciding the scope, duration, level, and type of restrictions, and
10 specific location of a closure or quarantine, the director shall consult with the
11 agency, entity, owner, or operator with jurisdiction, control, or management
12 responsibility over the marina, boat launch facility, or other facility, in order to
13 focus the closure or quarantine to specific areas and facilities so as to avoid or
14 minimize disruption of economic or recreational activity in the vicinity.

15 **Comment.** Section 33665 continues former Fish and Game Code Section 2301(a)(2)(D)(ii)-
16 (iv) without substantive change.

17 **§ 33670. Involvement of other agencies**

18 33670. (a) Upon a determination by the director that it would further the
19 purposes of this section, other state agencies, including, but not limited to, the
20 Department of Parks and Recreation, the Department of Water Resources, the
21 Department of Food and Agriculture, and the State Lands Commission, may
22 exercise the authority granted to the department in Sections 33660 and 33665.

23 (b) A determination made pursuant to paragraph (1) shall be in writing and shall
24 remain in effect until withdrawn, in writing, by the director.

25 **Comment.** Section 33670 continues former Fish and Game Code Section 2301(b) without
26 substantive change.

27 **§ 33675. Inapplicability of division of Public Resources Code**

28 33675. Except as provided in subdivision (c) of Section 33660, Division 13
29 (commencing with Section 21000) of the Public Resources Code does not apply to
30 the implementation of this section.

31 **Comment.** Section 33675 continues former Fish and Game Code Section 2301(c)(1) without
32 substantive change.

33 **§ 33680. Water supply agency cooperation**

34 33680. (a) A public or private agency that operates a water supply system shall
35 cooperate with the department to implement measures to avoid infestation by
36 dreissenid mussels, and to control or eradicate any infestation that may occur in a
37 water supply system.

38 (b) If dreissenid mussels are detected, the operator of the water supply system,
39 in cooperation with the department, shall prepare and implement a plan to control

1 or eradicate dreissenid mussels within the system. The approved plan shall contain
2 the following minimum elements:

3 (1) Methods for delineation of infestation, including both adult mussels and
4 veligers.

5 (2) Methods for control or eradication of adult mussels and decontamination of
6 water containing larval mussels.

7 (3) A systematic monitoring program to determine any changes in conditions.

8 (4) A requirement that the operator of the water supply system permit
9 inspections by the department, as well as cooperate with the department, to update
10 or revise control or eradication measures in the approved plan to address scientific
11 advances in the methods of controlling or eradicating mussels and veligers.

12 (c) If the operator of water delivery and storage facilities for public water supply
13 purposes has prepared, initiated, and is in compliance with all the elements of an
14 approved plan to control or eradicate dreissenid mussels in accordance with
15 subdivision (b), the requirements of Sections 33660 and 33665 do not apply to the
16 operation of those water delivery and storage facilities, and the operator is not
17 subject to any civil or criminal liability for the introduction of dreissenid mussel
18 species as a result of those operations.

19 (d) The department may require the operator of a facility to update its plan, and
20 if the plan is not updated or revised as described in paragraph (4) of subdivision
21 (b), Sections 33660 and 33665 shall apply to the operation of the water delivery
22 and storage facilities covered by the plan until the operator updates or revises the
23 plan and initiates and complies with all of the elements of the updated or revised
24 plan.

25 **Comment.** Section 33680 continues former Fish and Game Code Section 2301(d) without
26 substantive change.

27 **§ 33685. Department authority to adopt regulations**

28 33685. The department may adopt regulations to carry out this chapter.

29 **Comment.** Section 33685 continues former Fish and Game Code Section 2301(g) without
30 substantive change.

31 **§ 33690. Immunity from liability**

32 33690. Pursuant to Section 818.4 of the Government Code, the department and
33 any other state agency exercising authority under this section shall not be liable
34 with regard to any determination or authorization made pursuant to this chapter.

35 **Comment.** Section 33690 continues former Fish and Game Code Section 2301(h) without
36 substantive change.

37 **§ 33695. Penalty for violation**

38 33695. (a) In addition to any other penalty provided by law, any person who
39 violates this chapter, violates any verbal or written order or regulation adopted
40 pursuant to this chapter, or who resists, delays, obstructs, or interferes with the

1 implementation of this chapter, is subject to a penalty, in an amount not to exceed
2 one thousand dollars (\$1,000), which shall be imposed administratively by the
3 department.

4 (b) A penalty shall not be imposed pursuant to subdivision (a) unless the
5 department has adopted regulations specifying the amount of the penalty and the
6 procedure for imposing and appealing the penalty.

7 **Comment.** Section 33695 continues former Fish and Game Code Section 2301(f) without
8 substantive change.

9 **§ 33700. Inoperative date**

10 33700. This chapter shall remain in effect only until January 1, 2017, and as of
11 that date is repealed, unless a later enacted statute, that is enacted before January
12 1, 2017, deletes or extends that date.

13 **Comment.** Section 33700 continues former Fish and Game Code Section 2301(i) without
14 substantive change.

15 **CHAPTER 2. RESERVOIR OWNERS OR MANAGERS**

16 **§ 33750. Inapplicability of chapter**

17 33750. This chapter does not apply to a reservoir in which nonnative dreissenid
18 mussels have been detected.

19 **Comment.** Section 33750 continues former Fish and Game Code Section 2302(g) without
20 substantive change.

21 **§ 33755. Duties where water activities are permitted**

22 33755. Any person, or federal, state, or local agency, district, or authority that
23 owns or manages a reservoir, as defined in Section 6004.5 of the Water Code,
24 where recreational, boating, or fishing activities are permitted, except a privately
25 owned reservoir that is not open to the public, shall do both of the following:

26 (a) Assess the vulnerability of the reservoir for the introduction of nonnative
27 dreissenid mussel species.

28 (b) Develop and implement a program designed to prevent the introduction of
29 nonnative dreissenid mussel species, which shall include, at a minimum, all of the
30 following:

31 (1) Public education.

32 (2) Monitoring.

33 (3) Management of those recreational, boating, or fishing activities that are
34 permitted.

35 **Comment.** Section 33755 continues former Fish and Game Code Section 2302(a)-(b) without
36 substantive change.

1 **§ 33760. Duties where water activities are not permitted**

2 33760. Any person, or federal, state, or local agency, district, or authority, that
3 owns or manages a reservoir as defined in Section 6004.5 of the Water Code
4 where recreational, boating, or fishing activities of any kind are not permitted,
5 except a privately owned reservoir that is not open to the public, shall, based on its
6 available resources and staffing, include visual monitoring for the presence of
7 mussels as part of its routine field activities.

8 **Comment.** Section 33760 continues former Fish and Game Code Section 2302(c) without
9 substantive change.

10 **§ 33765. Duties where reservoir not open to public**

11 33765. Any entity that owns or manages a reservoir as defined in Section 6004.5
12 of the Water Code, except a privately owned reservoir, that is not open to the
13 public for recreational, boating, or fishing activities, may refuse the planting of
14 fish in that reservoir by the department, unless the department can demonstrate
15 that the fish are not known to be infected with nonnative dreissenid mussels.

16 **Comment.** Section 33765 continues former Fish and Game Code Section 2302(d) without
17 substantive change.

18 **§ 33770. Applicability of chapter to governmental entities**

19 33770. Except as specifically set forth in this chapter, this chapter applies both
20 to reservoirs that are owned or managed by governmental entities, and reservoirs
21 that are owned or managed by private persons or entities.

22 **Comment.** Section 33770 continues former Fish and Game Code Section 2302(e) without
23 substantive change.

24 **§ 33775. Adoption of regulations by department**

25 33775. To the extent that sufficient funds and personnel are available to do so,
26 the department may adopt regulations establishing procedures to implement this
27 section and Section 33780, and to enforce this chapter.

28 **Comment.** Section 33775 continues the third sentence of former Fish and Game Code Section
29 2302(f) without substantive change.

30 **§ 33780. Penalty for violation**

31 33780. (a) A violation of this chapter is not governed by **Section 12000**.

32 (b) In lieu of any other penalty provided by law, a person who violates this
33 chapter is subject to a civil penalty in an amount not to exceed one thousand
34 dollars (\$1,000) per violation, which shall be imposed administratively by the
35 department.

36 **Comment.** Section 33780 continues the first two sentences of former Fish and Game Code
37 Section 2302(f) without substantive change.

1 TITLE 3. COMMERCIAL PROVISIONS

2 § 33850. Application of title

3 33850. For purposes of **Section 7600**, the provisions in this title are commercial
4 provisions.

5 **Comment.** Section 33850 is new. It is added for drafting convenience.

6 § 33900. Take

7 33900. Mussels (*Mytilus californianus*) may be taken only in accordance with
8 regulations that the commission may adopt.

9 **Comment.** Section 33900 continues former Fish and Game Code Section 8344 without
10 substantive change.

11 PART 11. SCALLOPS

12 TITLE 1. SCALLOPS GENERALLY

13 § 33950. Mollusk

14 33950. For the purposes of Title 9 (commencing with Section 33400), a scallop
15 is a mollusk.

16 **Comment.** Section 33950 is new.

17  **Staff Note.** Based on staff research, it appears that a scallop is a mollusk. **The staff invites**
18 **comment on whether that is correct.**

19 TITLE 2. COMMERCIAL PROVISIONS

20 § 34000. Application of title

21 34000. For purposes of **Section 7600**, the provisions in this title are commercial
22 provisions.

23 **Comment.** Section 34000 is new. It is added for drafting convenience.

24 § 34005. Sale or purchase

25 34005. It is unlawful for a person to sell or purchase rock scallops (*Hinnites*
26 *multirugosus*) or scallops (*Pecten circularis*), except that scallops cultivated
27 pursuant to **Division 12 (commencing with Section 15000)** may be sold or
28 purchased subject to regulations of the commission.

29 **Comment.** Section 34005 continues former Fish and Game Code Section 8345 without
30 substantive change.

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PART 12. SEA CUCUMBERS

TITLE 1. SEA CUCUMBERS GENERALLY

§ 34050. Provisions not exclusive

34050. The provisions of this part are not intended to be exclusive. Other provisions that govern sea cucumbers include, but are not limited to, the following provisions:

(a) Section **8496**.

(b) Section **8841**.

Comment. Section 34050 is new.

TITLE 2. COMMERCIAL PROVISIONS

§ 34100. Application of title

34100. For purposes of **Section 7600**, the provisions in this title are commercial provisions.

Comment. Section 34100 is new. It is added for drafting convenience.

§ 34105. Take, possession, or landing

34105. (a) A sea cucumber shall not be taken, possessed aboard a boat, or landed by a person, for a commercial purpose, except under a valid sea cucumber permit issued to that person that has not been suspended or revoked.

(b) When taking a sea cucumber by diving, every diver shall have a sea cucumber diving permit issued to that person that has not been suspended or revoked.

(c) When a sea cucumber is taken by means other than diving, at least one person aboard the boat shall have a valid sea cucumber trawl permit issued to that person that has not been suspended or revoked.

Comment. Section 34105 continues former Fish and Game Code Section 8405 without substantive change.

§ 34110. Permit

34110. (a) An applicant for a sea cucumber permit shall specify by gear type, either trawl or dive, the method by which the applicant intends to take sea cucumbers. The gear type of a sea cucumber permit, either trawl or dive, shall not be transferable.

(b) The fee for a sea cucumber permit shall be two hundred fifty dollars (\$250).

(c) Each permittee shall complete and submit an accurate record of all sea cucumber fishing activities on forms provided by the department.

(d) In order to renew a sea cucumber permit for any permit year, an applicant shall have been issued a sea cucumber permit in the immediately preceding permit

1 year. Applications for renewal of a sea cucumber permit shall be received by the
2 department or, postmarked if mailed, by April 30 of the permit year.

3 **Comment.** Section 34110 continues former Fish and Game Code Section 8405.1 without
4 substantive change.

5 **§ 34115. Transfer of permit**

6 34115. (a) A valid sea cucumber permit may be transferred by the permittee if
7 the permittee has previously held a valid sea cucumber permit for any four permit
8 years and landed at least 100 pounds of sea cucumbers in each of those permit
9 years, as documented by landing receipts with the name of the permittee shown on
10 the receipts.

11 (b) A valid sea cucumber permit that has not been suspended or revoked may be
12 transferred only to a person who has a valid commercial fishing license issued
13 pursuant to **Section 7852** that has not been suspended or revoked. A sea cucumber
14 permit shall not be transferred to a person who has had a sea cucumber permit
15 suspended or revoked, while the suspension or revocation is in effect.

16 (c) An application for transfer of a permit shall be in the form of a notarized
17 letter, and shall be submitted to the department, with reasonable proof that the
18 department may require to establish the qualifications of the permitholder and the
19 transferee, accompanied by payment to the department of a nonrefundable transfer
20 fee of two hundred dollars (\$200).

21 (d) The transfer shall take effect on the date notice of approval of the application
22 is given to the transferee by the department.

23 (e) The transferred sea cucumber permit shall be valid for the remainder of the
24 permit year, and may be renewed in subsequent years.

25 (f) A sea cucumber trawl permit may be transferred to a qualified person as
26 provided in subdivisions (b) and (c) to take sea cucumbers by diving or by use of
27 trawl nets. A sea cucumber dive permit may be transferred to a qualified person as
28 provided in subdivisions (b) and (c) only to take sea cucumbers by diving. The
29 transferee shall specify the gear type, either trawl or dive, that the transferee
30 intends to use to take sea cucumbers. The gear type of the sea cucumber permit,
31 either trawl or dive, shall not be transferable.

32 (g) Upon the death of a sea cucumber permitholder, the deceased person's sea
33 cucumber dive or trawl permit may be transferred by his or her heirs, assignees, or
34 estate to a qualified person as provided in subdivision (b), upon payment of the fee
35 described in subdivision (c), and in accordance with subdivisions (a) and (f). The
36 estate of the decedent may transfer the permit pursuant to this title no later than
37 two years from the date of death of the permitholder, as listed on the death
38 certificate.

39 (h) For purposes of a transfer under subdivision (g), the heirs, assignees, or
40 estate shall renew the permit as specified in **Section 8405.1** to keep the permit
41 valid until transferred.

1 **Comment.** Section 34115 continues former Fish and Game Code Section 8405.2 without
2 substantive change.

3 **§ 34120. Commission regulation**

4 34120. (a) The commission, upon recommendation of the department or upon its
5 own motion and in consultation with the sea cucumber fishing industry, may adopt
6 regulations, including provisions governing seasons, gear restrictions, hours of
7 operation, and any other measures that it determines may reasonably be necessary
8 to protect the sea cucumber resource and to assure a sustainable sea cucumber
9 fishery or to enhance enforcement activities.

10 (b) The number of sea cucumber permits issued for the April 1, 1997, to March
11 31, 1998, inclusive, permit year shall constitute the maximum number of permits
12 available for all subsequent permit years for the sea cucumber fishery. The
13 department may establish by regulation a method, if necessary, to reissue any sea
14 cucumber permit not renewed or transferred. The permit type of a sea cucumber
15 permit, either trawl or dive, that is reissued shall not be transferable.

16 (c) The commission may permanently revoke the sea cucumber permit of any
17 person convicted of the unlawful taking of any California halibut while operating
18 pursuant to a sea cucumber permit. The commission may revoke the sea cucumber
19 permit of any person convicted of any other violation of this code or regulation
20 adopted pursuant thereto while operating pursuant to a sea cucumber permit. Any
21 revocation of a permit pursuant to this subdivision shall be in addition to any
22 action the department may take pursuant to **Section 12000**.

23 (d) The department, using existing funds, may determine the actual costs to the
24 department of enforcing this chapter. The commission, upon recommendation of
25 the department, may adjust the fee for the issuance or transfer of a permit to an
26 amount not to exceed three hundred fifty dollars (\$350), to reflect the actual cost
27 of enforcing this chapter.

28 **Comment.** Section 34120 continues former Fish and Game Code Section 8405.3 without
29 substantive change.

30 **§ 34125. Inoperative date of chapter**

31 34125. This chapter shall become inoperative on April 1, 2020, and, as of
32 January 1, 2021, is repealed, unless a later enacted statute that is enacted before
33 January 1, 2021, deletes or extends the date on which this chapter becomes
34 inoperative or is repealed.

35 **Comment.** Section 34125 continues former Fish and Game Code Section 8405.4 without
36 substantive change.

1 of the grant accordingly. The revenue received pursuant to that former subdivision
2 (b) of Section 8051.1 shall remain available for funding of the grant program
3 pursuant to this subdivision until that revenue is fully encumbered, or the
4 authorized amount of the grant program is expended, whichever event is later.

5 (e) The revenue received pursuant to former subdivision (b) of Section 8051.1 as
6 it read on December 31, 1995, shall first be used to reimburse the department for
7 departmental overhead charges incurred in administering the grant.

8 **Comment.** Section 34255 continues former Fish and Game Code Section 1068 without
9 substantive change.

10 **Staff Note.** The staff invites comment on whether existing Fish and Game Code Section
11 **1068 is obsolete, and need not be continued in the proposed law.**

12 TITLE 2. COMMERCIAL PROVISIONS

13 § 34300. Application of title

14 34300. For purposes of **Section 7600**, the provisions in this title are commercial
15 provisions.

16 **Comment.** Section 34300 is new. It is added for drafting convenience.

17 § 34305. Permit required

18 34305. (a) Sea urchins shall not be taken for a commercial purpose except under
19 a valid sea urchin diving permit issued to that person that has not been suspended
20 or revoked, subject to regulations adopted by the commission.

21 (b) The fee for a sea urchin diving permit is three hundred thirty dollars (\$330).

22 (c) The commission may, whenever necessary to prevent overutilization, or to
23 ensure efficient and economic operation of the fishery, limit the number of permits
24 that may be issued.

25 (d) The commission, as it determines appropriate to protect the resource, may
26 limit the number of permits, either on a statewide basis or within selected
27 geographical areas.

28 **Comment.** Subdivision (a) of Section 34305 continues the first sentence of former Fish and
29 Game Code Section 9054 without substantive change.

30 Subdivision (b) continues former Fish and Game Code Section 9055 without substantive
31 change.

32 Subdivision (c) continues the third sentence of former Fish and Game Code Section 9054
33 without substantive change.

34 Subdivision (d) continues the fourth sentence of former Fish and Game Code Section 9054
35 without substantive change.

36 § 34310. Allowed appliances

37 34310. Rakes, airlifts, or other handheld appliances may be used to take sea
38 urchins.

39 **Comment.** Section 34310 continues the second sentence of former Fish and Game Code
40 Section 9054 without change.

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PART 14. SHRIMP

TITLE 1. SHRIMP GENERALLY

§ 34350. Crustacean

34350. For the purposes of Part 6 (commencing with Section 32850), a shrimp is a crustacean.

Comment. Section 34350 is new.

<p>☞ Staff Note. Based on staff research, it appears that a shrimp is a crustacean. The staff invites comment on whether that is correct.</p>

§ 34400. Provisions not exclusive

34400. The provisions of this part are not intended to be exclusive. Other provisions that govern shrimp include, but are not limited to, the following provisions:

(a) **Section 7059.**

(b) **Section 8597.**

(c) **Section 8841.**

(d) **Section 9050.**

(e) **Section 15005.**

Comment. Section 34400 is new.

TITLE 2. COMMERCIAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 34450. Application of title

34450. For purposes of **Section 7600**, the provisions in this title are commercial provisions.

Comment. Section 34450 is new. It is added for drafting convenience.

§ 34455. “Shrimp”

34455. For the purposes of this title, “prawns” or “shrimp,” or both, include all of the following species:

(1) Spot prawn (*Pandalus platyceros*).

(2) Ridgeback prawn (*Sicyonia ingentis*).

(3) Coonstrip prawn (*Pandalus danae*).

(4) Pacific ocean shrimp (*Pandalus jordani*).

(5) Bay shrimp (*Crangon franciscorum* and *Crango sp.*).

(6) Red rock shrimp (*Lysmata californica*).

Comment. Section 34455 continues former Fish and Game Code Section 8590 without substantive change.

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CHAPTER 2. TAKE

Article 1. General Provisions

§ 34500. Take generally allowed

34500. Except as provided in this chapter, prawns or shrimp may be taken in any waters of the state.

Comment. Section 34500 continues former Fish and Game Code Section 8593 without substantive change.

§ 34505. Take for commercial purpose

34505. Prawns or shrimp may be taken for a commercial purpose under the regulations of the commission.

Comment. Section 34505 continues former Fish and Game Code Section 8591 without substantive change.

§ 34510. Use of traps

34510. (a) Except as otherwise provided in this chapter, prawns or shrimp may be taken with a prawn trap or shrimp trap under a general trap permit issued pursuant to **Section 9001**.

(b) Prawns or shrimp may be taken for a commercial purpose in either a prawn trap or a shrimp trap, subject to **Article 1 (commencing with Section 9000) of Chapter 4**.

(c) A prawn trap or a shrimp trap shall be six feet or less in its greatest dimension. Every opening from the exterior to the interior of a prawn trap or a shrimp trap shall be five inches or less in any dimension.

(d) No other species shall be taken in a prawn trap or a shrimp trap. Any other species taken incidentally with a prawn trap or a shrimp trap shall be immediately released.

Comment. Subdivision (a) of Section 34510 continues former Fish and Game Code Section 9015(a) without substantive change.

Subdivision (b) continues the second part of former Fish and Game Code Section 8595(a) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 9015(b) without change.

Subdivision (d) continues former Fish and Game Code Section 8595(b) without change.

Article 2. Geographic Restrictions

§ 34550. Take south of Point Concepcion

34550. From Point Concepcion south to the Mexican border, shrimp may be taken with prawn or shrimp traps only in waters 50 fathoms or greater in depth.

Comment. Section 34550 continues former Fish and Game Code Section 8594 without change.

Article 3. Use of Trawl Nets

§ 34600. Permit

34600. Subject to **Article 10 (commencing with Section 8830) of Chapter 3**, prawns or shrimp may be taken for a commercial purpose with a trawl net of a design prescribed by the commission, pursuant to a permit issued by the department and under regulations adopted by the commission.

(b) **Sections 8831, 8833, 8835, and 8836** do not apply to trawl nets used or possessed under a permit issued pursuant to this section.

Comment. Subdivision (a) of Section 34600 combines and restates the first part of former Fish and Game Code Section 8595(a) and the first paragraph of former Fish and Game Code Section 8842(a) without substantive change.

Subdivision (b) continues the second paragraph of former Fish and Game Code Section 8842(a) without substantive change.

Staff Note. Proposed Section 34600(a) is intended to combine and restate the first part of former Fish and Game Code Section 8595(a) and the first paragraph of former Fish and Game Code Section 8842(a) to improve the clarity of those provisions, without changing their substantive effect. The existing provisions read as follows:

“8595. (a) Prawns or shrimp may be taken for commercial purposes with a trawl net, subject to Article 10 (commencing with Section 8830) of Chapter 3,....

8842. (a) Trawl nets of a design prescribed by the commission may be used or possessed to take shrimps or prawns under a permit issued by the department under regulations adopted by the commission.”

The staff invites comment on whether the combining and restatement of these two provisions would cause any substantive change in the meaning of either.

§ 34605. Geographic restrictions

34605. (a) Trawling for prawns or shrimp shall be authorized only in those waters of **Districts 6, 7, 10, 17, 18, and 19** that lie not less than three nautical miles from the nearest point of land on the mainland shore, and all offshore islands and the boundary line of **District 19A**.

(b) The commission shall permit the taking of pink shrimp not less than two nautical miles from shore in waters that lie between a line extending due west from False Cape and a line extending due west from Point Reyes from the nearest point of land on the mainland shore, if the commission finds that, upon review of information from the federal groundfish observer program and other available research and monitoring information that it determines relevant, the use of trawl gear minimizes bycatch, will not damage seafloor habitat, will not adversely affect ecosystem health, and will not impede reasonable restoration of kelp, coral, or other biogenic habitats. The commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts in making that finding.

Comment. Subdivision (a) of Section 34605 continues former Fish and Game Code Section 8842(b) without substantive change. A stated exception to the provision, expressly expiring on

1 January 1, 2008, is discontinued.

2 Subdivision (b) continues former Fish and Game Code Section 8842(d) without change.

3 **§ 34610. Incidental take while fishing for pink shrimp**

4 34610. When fishing for pink shrimp (*Pandalus jordani*) under a permit issued
5 pursuant to Section 34600, it is unlawful to possess in excess of 1,500 pounds of
6 incidentally taken fish per calendar day of a fishing trip, except Pacific whiting,
7 shortbelly rockfish, and arrowtooth flounder, which may be taken in any amount
8 not in excess of federal regulations.

9 **Comment.** Section 34610 continues the first sentence of former Fish and Game Code Section
10 8842(c) without substantive change.

11 **§ 34615. Possession or landing of halibut while fishing**

12 34615. No Pacific halibut and not more than 150 pounds of California halibut
13 shall be possessed or landed when fishing under a permit issued pursuant to
14 Section 34600.

15 **Comment.** Section 34615 continues the second sentence of former Fish and Game Code
16 Section 8842(c) without substantive change.

17 **§ 34620. Incidental take while fishing for ridgeback or spotted prawn**

18 34620. When fishing for ridgeback prawn and spotted prawn under a permit
19 issued pursuant to Section 34600, it is unlawful to possess in excess of 1,000
20 pounds of incidentally taken fish per trip.

21 **Comment.** Section 34620 continues the third sentence of former Fish and Game Code Section
22 8842(c) without substantive change.

23

PART 15. SQUID

24

TITLE 1. SQUID GENERALLY

25 **§ 34700. Provisions not exclusive**

26 34700. The provisions of this part are not intended to be exclusive. Other
27 provisions that govern squid include, but are not limited to, the following
28 provisions:

29 (a) Section **8046**.

30 (b) Section **8597**.

31 (c) Section **8780**.

32 (d) Section **8780**.

33 (e) Section **10660**.

34 **Comment.** Section 34700 is new.

1 TITLE 2. COMMERCIAL PROVISIONS

2 CHAPTER 1. PRELIMINARY PROVISIONS

3 § 34750. Application of title

4 34750. For purposes of **Section 7600**, the provisions in this title are commercial
5 provisions.

6 **Comment.** Section 34750 is new. It is added for drafting convenience.

7 CHAPTER 2. TAKE

8 § 34800. When take permitted

9 34800. (a) North of Point Conception, squid may be taken the year around.

10 (b) The commission may adopt regulations specifying the days of the week and
11 the times of the day when squid may be taken.

12 **Comment.** Section 34800 continues former Fish and Game Code Section 8399 without
13 substantive change.

14  **Staff Note.** The intended meaning of the first clause of existing Fish and Game Code Section
15 8399 (which would be continued by proposed Section 34800(a)) is unclear. Is this provision
16 meant to *prohibit* the taking of squid anywhere *south* of Point Conception?

17 **The staff invites comment on this issue.**

18 § 34805. Unlawful activities in District 10

19 34805. (a) In **District 10**, it is unlawful to engage in the following activities:

20 (1) Attract squid by a light displayed from any vessel, except a vessel deploying
21 nets for the take, possession, and landing of squid or from the seine skiff of the
22 vessel deploying nets for the take, possession, and landing of squid.

23 (2) Attract squid by a light displayed from any vessel whose primary purpose is
24 not the deployment, or assisting in the deployment, of nets for the take,
25 possession, and landing of squid.

26 (3) To encircle any vessel, other than by the seine skiff of a vessel deploying
27 nets for the take, possession, and landing of squid, while that vessel is engaged in
28 the taking of squid.

29 (b) For purposes of this section, “seine skiff” means a vessel that meets all of the
30 following requirements:

31 (1) It is not licensed by the federal government or registered by the Department
32 of Motor Vehicles.

33 (2) It is used to assist a larger federally-licensed or state-registered fishing vessel
34 by assisting in the deployment and retrieval of nets and the landing of fish.

35 (3) It travels with that larger fishing vessel at all times.

36 (4) It is used solely at the direction of the operator of the larger fishing vessel.

37 (5) It is owned by the owner of the larger fishing vessel.

1 **Comment.** Section 34805 continues former Fish and Game Code Section 8399.1 without
2 substantive change.

3 **Staff Notes.** The staff notes the following ambiguities in the language of existing Section
4 8399.1(a):

5 1. Under Section 8399.1(a)(1), may light be displayed to attract squid from the *seine skiff* of a
6 vessel deploying squid nets? If so, does the seine skiff have to itself be concurrently deploying
7 nets?

8 2. In Section 8399.1(a)(3), which “vessel” is the object of the reference “while that vessel is
9 engaged in the taking of squid” at the end of the provision – the vessel deploying squid nets with
10 a seine skiff, or the vessel that is being encircled?

11 **The staff invites comment on these questions.**

12 CHAPTER 3. MARKET SQUID

13 § 34850. Legislative declaration

14 34850. (a) The Legislature finds and declares that the fishery for market squid
15 (*Loligo opalescens*) is the state’s largest fishery by volume, generating millions of
16 dollars of income to the state annually from domestic and foreign sales. In addition
17 to supporting an important commercial fishery, the market squid resource is
18 important to the recreational fishery and is forage for other fish taken for
19 commercial and recreational purposes, as well as for marine mammals, birds, and
20 other marine life. The growing international market for squid and declining squid
21 production from other parts of the world has resulted in an increased demand for
22 California market squid, which, in turn, has led to newer, larger, and more
23 efficient vessels entering the fishery and increased processing capacity.

24 (b) The Legislature finds that the lack of research on market squid and the lack
25 of annual at-sea surveys to determine the status of the resource, combined with the
26 increased demand for, and fishing effort on, market squid could result in
27 overfishing of the resource, damaging the resource, and financially harming those
28 persons engaged in the taking, landing, processing, and sale of market squid.

29 (c) The Legislature further finds that some individuals, vessels, and processing
30 plants engaged in the market squid fishery have no other viable alternative
31 fisheries available to them and that a decline or a loss of the market squid resource
32 would cause economic devastation to the individuals or corporations engaged in
33 the market squid fishery.

34 (d) The Legislature declares that to prevent excessive fishing effort in the market
35 squid fishery and to develop a plan for the sustainable harvest of market squid, it is
36 necessary to adopt and implement a fishery management plan for the California
37 market squid fishery that sustains both the squid population and the marine life
38 that depends on squid.

39 (e) The Legislature finds that a sustainable California market squid fishery can
40 best be ensured through ongoing oversight and management of the fishery by the
41 commission. With regard to the market squid fishery, the Legislature urges that
42 any limited entry component of a fishery management plan, if necessary, should

1 be adopted for the primary purpose of protecting the resource and not simply for
2 the purpose of diminishing or advancing the economic interests of any particular
3 individual or group.

4 **Comment.** Section 34850 continues former Fish and Game Code Section 8420 without
5 change.

6 **§ 34855. Purchase of squid from vessel**

7 34855. (a) No person shall purchase squid from a vessel or vessels unless that
8 person holds a license issued pursuant to **Section 8032 or 8033**, employs a
9 certified weighmaster, and the facilities operated by the person are located on a
10 permanent, fixed location.

11 (b) Notwithstanding any other provision of law, this section shall not apply to
12 the transfer at sea of squid for live bait in an amount less than 200 pounds in a
13 calendar day.

14 **Comment.** Section 34855 continues former Fish and Game Code Section 8424 without
15 substantive change.

16 **§ 34860. Adoption of fishery management plan and regulations**

17 34860. The commission, after consideration of the report and recommendations
18 prepared by the department pursuant to subdivision (c) of former Section 8426,
19 and, after public hearings, shall adopt a market squid fishery management plan and
20 regulations to protect the squid resource and manage the squid fishery at a level
21 that sustains healthy squid populations, taking into account the level of fishing
22 effort and ecological factors, including, but not limited to, the species' role in the
23 marine ecosystem and oceanic conditions. The management plan shall be
24 consistent with the requirements of **Part 1.7 (commencing with Section 7050)**.
25 Development of the plan shall be coordinated with the federal Coastal Pelagic
26 Species Fishery Management Plan.

27 **Comment.** Section 34860 continues former Fish and Game Code Section 8425(a) without
28 substantive change.

29 **§ 34865. Management of fishery**

30 34865. The commission shall manage the squid fishery in accordance with the
31 requirements of **Part 1.7 (commencing with Section 7050)**.

32 **Comment.** Section 34865 continues former Fish and Game Code Section 8425(b) without
33 substantive change.

34 **§ 34870. Permit fee**

35 34870. (a) The fee for a commercial market squid vessel permit and for a
36 commercial squid light boat owner's permit shall be established annually by the
37 commission.

38 (b) The total amount of fees collected pursuant to this section, including any
39 revenue derived from any other appropriate source, as determined and allocated by

1 the commission, shall not exceed the department's and the commission's costs for
2 managing the market squid fishery pursuant to **Section 8425**.

3 (c) The fees collected pursuant to this chapter shall be used only for the
4 management of the market squid fishery pursuant to **Section 8425**.

5 **Comment.** Section 34870 continues former Fish and Game Code Section 8427 without
6 substantive change.

7 **§ 34875. Statements relating to permit**

8 34875. Any statement made to the department, orally or in writing, relating to a
9 permit issued under this chapter, shall be made under penalty of perjury.

10 **Comment.** Section 34875 continues the first sentence of former Fish and Game Code Section
11 8429 without substantive change.

12 **§ 34880. Revocations based on submission of material false statements**

13 34880. The commission shall revoke the commercial fishing license, the
14 commercial boat registration of any vessel, and, if applicable, any licenses issued
15 pursuant to **Section 8032, 8033, or 8034** that are held by any person submitting
16 material false statements, as determined by the commission, for the purpose of
17 obtaining a commercial market squid vessel permit or a commercial or light boat
18 owner's permit.

19 **Comment.** Section 34880 continues the second sentence of former Fish and Game Code
20 Section 8429 without substantive change.

21 **Staff Note.** Staff research suggests that, in addition to the two market squid permits listed in
22 the second sentence of existing Section 8429 (which would be continued by proposed Section
23 34880), a third type of market squid permit is now available, a market squid brail permit. **Should**
24 **proposed Section 34880 be revised to make it applicable to this permit as well?**

25 **§ 34885. No limit on authority of director or commission**

26 34885. Notwithstanding any other provision of law, nothing in this chapter shall
27 prohibit or otherwise limit the authority of the director or the commission under
28 any other law.

29 **Comment.** Section 34885 continues former Fish and Game Code Section 8429.5 without
30 substantive change.

31 **§ 34890. Inoperative date of sections**

32 34890. **Sections 8420.5 to 8423.5**, inclusive, and **Sections 8426 and 8427** shall
33 become inoperative upon the adoption by the commission of a market squid
34 fishery management plan and the adoption of implementing regulations pursuant
35 to **Section 8425**, and are repealed six months thereafter.

36 **Comment.** Section 34890 continues former Fish and Game Code Section 8429.7 without
37 substantive change.

1  **Staff Note.** All sections that would be rendered inoperative and repealed by existing Fish and
2 Game Code Section 8429.7 (which would be continued by proposed Section 34890) have already
3 been repealed.

4 **The staff invites comment on whether existing Section 8429.7 is therefore obsolete and**
5 **need not be continued in the proposed law.**

6 CHAPTER 4. MISCELLANEOUS PROVISIONS

7 § 34950. Unloading for use in cannery

8 34950. (a) No squid intended for or used in any cannery shall be unloaded from
9 any vessel, except at a weighing or measuring device approved by the Bureau of
10 Weights and Measures.

11 (b) Those squid shall be weighed by a public weighmaster licensed as an
12 individual under the laws of this state, and a receipt as to that weight shall be
13 immediately issued by the weighmaster to the commercial fisherman at the time of
14 receipt of the products.

15 (c) Copies of the receipt shall be handled in the manner provided in **Chapter 3**
16 **(commencing with Section 14300)** and **Chapter 4 (commencing with Section**
17 **14500) of Title 9.**

18 **Comment.** Section 34950 continues the part of former Fish and Game Code Section 7702.1
19 applicable to squid without substantive change.

20 DIVISION 10. AMPHIBIANS

21 PART 1. GENERAL PROVISIONS

22 § 36000. Provisions not exclusive

23 36000. Animals governed by this division are also governed by other provisions
24 of this code, including but not limited to Division 5 (commencing with Section
25 5000).

26 **Comment.** Section 36000 is new.

27 § 36005. Use as bait

28 36005. An amphibian may be used for bait, or released in the same waters from
29 which it was taken.

30 **Comment.** Section 36005 continues the part of former Fish and Game Code Section 5505
31 applicable to amphibians without substantive change.

32 PART 2. NATIVE AMPHIBIANS

33 § 36050. “Native amphibian

34 36050. “Native amphibian” as used in this part means a salamander, toad, or any

1 other member of the class amphibia native to California.

2 **Comment.** Section 36050 continues former Fish and Game Code Section 6895 without
3 substantive change.

4 **§ 36055. Commission to establish rules**

5 36055. Except as otherwise provided in this part, the commission shall establish
6 rules for the commercial take, sale, transport, export, or import of native
7 amphibians.

8 **Comment.** Section 36055 continues former Fish and Game Code Section 6896 without
9 substantive change.

10 **PART 3. SPECIFIC TYPES OF AMPHIBIANS**

11 **TITLE 1. FROGS**

12 **CHAPTER 1. PRELIMINARY PROVISIONS**

13 **§ 36100. “Frog”**

14 36100. As used in this title, “frog” means all species of frog.

15 **Comment.** Section 36100 continues former Fish and Game Code Section 6850 without
16 substantive change.

17 **§ 36105. Provisions not exclusive**

18 36105. The provisions of this title are not intended to be exclusive. Other
19 provisions that govern abalone include, but are not limited to, the following
20 provisions:

21 (a) **Section 2003.**

22 (b) **Section 15005.**

23 **Comment.** Section 36105 is new.

24 **CHAPTER 2. TAKE OR POSSESSION**

25 **§ 36150. General prohibition on take or possession**

26 36150. (a) Except as otherwise provided in this code or in regulations adopted
27 by the commission, it is unlawful to take or possess any frog for a commercial
28 purpose.

29 (b) This chapter does not apply to frogs grown pursuant to **Division 12**
30 **(commencing with Section 15000).**

31 **Comment.** Section 36150 continues former Fish and Game Code Section 6851 without
32 substantive change.

33 **§ 36155. Prohibited take by firearm**

34 36155. It is unlawful to take frogs by the use of firearms of any caliber or type.

1 **Comment.** Section 36155 continues former Fish and Game Code Section 6854 without
2 change.

3 **§ 36160. Lawful possession limited to authorized number of frogs**

4 36160. Any person who conducts a place of business where frogs are sold to the
5 public for food, or who takes or possesses frogs for sale to or for use by
6 educational or scientific institutions for scientific purposes, may possess at the
7 place of business only the number of frogs that have been legally obtained
8 pursuant to this code or regulations adopted by the commission.

9 **Comment.** Section 36160 continues former Fish and Game Code Section 6852 without
10 change.

11 **§ 36165. Disposal permit**

12 36165. The department may issue a permit to take and dispose of frogs under
13 any limitations the commission may prescribe, when in the judgment of the
14 department, frogs are polluting the water supply in any area, or otherwise
15 constitute a nuisance.

16 **Comment.** Section 36165 continues former Fish and Game Code Section 6855 without
17 substantive change.

18 **CHAPTER 3. FROG JUMPING CONTESTS**

19 **§ 36200. “Frog-jumping contest”**

20 36200. As used in this chapter, “frog-jumping contest” means a contest
21 generally and popularly known as a frog-jumping contest, which is open to the
22 public and is advertised or announced in a newspaper.

23 **Comment.** Section 36200 continues former Fish and Game Code Section 6880 without
24 substantive change.

25 **§ 36205. Applicability of chapter**

26 36205. The provisions of this chapter apply only to a frog that satisfies all the
27 following requirements:

28 (a) The frog is taken by a means and in a manner that normally would not
29 seriously injure the frog.

30 (b) The frog is to be used in a frog-jumping contest.

31 (c) The frog is kept in a manner that will reasonably preserve its life.

32 **Comment.** Section 36205 combines and restates the first sentence of former Fish and Game
33 Code Section 6881, Section 6882, and Section 6884, without substantive change.

34 **Staff Note.** Proposed Section 36205 is intended to combine and restate the first sentence of
35 former Fish and Game Code Section 6881, Section 6882, and Section 6884, to improve the clarity
36 of those provisions without changing their substantive effect. The existing provisions read as
37 follows:

38 “6881. Frogs to be used in frog-jumping contests shall be governed by this article only.

39 6882. If the means used for taking such frogs can, as normally used, seriously injure the frog, it

1 shall be conclusively presumed the taking is not for the purposes of a frog-jumping contest.

2 6884. A frog which is not kept in a manner which is reasonable to preserve its life is not within
3 the coverage of this article.”

4 **The staff invites comment on whether the proposed combination and restatement of these**
5 **provisions would cause any substantive change in their meaning.**

6 **§ 36210. Exemption from other law**

7 36210. A frog that is governed by this chapter may be taken at any time, without
8 a license or permit.

9 **Comment.** Section 36210 continues the second sentence of former Fish and Game Code
10 Section 6881 without substantive change.

11 **§ 36215. Disposition of dead frog**

12 36215. A person may possess any number of live frogs to use in frog-jumping
13 contests, but if a frog possessed for that purpose dies or is killed, it must be
14 destroyed as soon as possible, and may not be eaten or otherwise used for any
15 purpose.

16 **Comment.** Section 36215 continues former Fish and Game Code Section 6883 without
17 substantive change.

18 **§ 36220. No modification of provision by commission**

19 36220. The commission has no power to modify a provision of this chapter by
20 any order, rule, or regulation.

21 **Comment.** Section 36220 continues former Fish and Game Code Section 6885 without
22 substantive change.

23 **DIVISION 11. REPTILES**

24 **PART 1. GENERAL PROVISIONS**

25 **§ 36300. Provisions not exclusive**

26 36300. Animals governed by this division are also governed by other provisions
27 of this code, including but not limited to Division 5 (commencing with Section
28 5000).

29 **Comment.** Section 36300 is new.

1 mark or otherwise identify the tortoise to the satisfaction of the department, and
2 shall not transfer the tortoise to any other person without prior approval of the
3 department.

4 **Comment.** Section 36460 continues former Fish and Game Code Section 5001 without
5 substantive change.

6 CHAPTER 2. TURTLES

7 § 36500. Pacific leatherback sea turtles

8 36500. (a) October 15, 2013, and every October 15 thereafter, is hereby
9 designated as Pacific Leatherback Sea Turtle Conservation Day.

10 (b) The Legislature encourages California public schools to include Pacific
11 leatherback sea turtles in their teaching lessons and curriculum whenever possible.

12 (c) The Legislature encourages state and federal agencies, nongovernmental
13 agencies, fishers, coastal tour operators, and other interested stakeholders to
14 establish and participate in a statewide, voluntary Pacific leatherback sea turtle
15 watch to record sightings of the Pacific leatherback sea turtle in California and
16 West Coast waters.

17 (d) The Legislature encourages state and federal agencies to build cooperative
18 relationships with the Western Pacific island nations where Pacific leatherback sea
19 turtles return to nest in order to increase awareness and conservation of this
20 critically endangered species.

21 (e) The Legislature urges state and federal agencies to take proactive
22 conservation measures and prevent further threats to Pacific leatherback sea turtles
23 and their habitats.

24 **Comment.** Section 36500 continues Government Code Section 7593.5 without change.

25 DIVISION 12. INSECTS

26 PART 1. GENERAL PROVISIONS

27 § 36600. Provisions not exclusive

28 36600. Animals governed by this division are also governed by other provisions
29 of this code, including but not limited to Division 5 (commencing with Section
30 5000).

31 **Comment.** Section 36600 is new.

DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Fish and Game Code or other indicated code, and the corresponding provision of the proposed law (if any).

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
310	27400	2302(a)-(b)	33755
313	30150	2302(c)	33760
316	26455	2302(d)	33765
316.5	27410	2302(e)	33770
1000.6	27360	2302(f)	33775
1021	36650	2302(g)	33750
1068	34255	2356	29650
1170	25200(a)	2358	29655
1172	25200(b)	2359	25565(a)
1174	25205	2360	25550, 25560
1200	27500	2361	27450
1201	27505	2362	25405, 25575(a)-(b), 30400
1202	27510	2363	25565(b), 28660, 29200
1203	27515	2364	31550
1204	27520	2365	33115
1205	27525	2368	31255
1206	27530	2369	31260
1725	29700	2371	30750
1726	29705	5000	36450
1726.1	29710	5001	36460
1726.4	29715	5002	36455
1726.5	29720	5062	36350
1727	29725	5505	32855, 33410, 36005
1728	29730	5514	27405, 29850
1729	29735	5517	28755
1730	29740	5520	31000
1740	25600	5521	30800
1741	25605	5521.5	30805
1742	25610	5521.6	30810
1743	25615	5522(a)-(b)	31005
2021	28760(a)-(d)	5522(c)	31010
2021.5(a)(1), (3)	28760(e)-(f)	5522(d)	31015
2021.5(a)(2)	not cont'd	5522(e)	31020
2021.5(b)	28765	5669	33500(a)
2301(a)(1)	33650	5670	33505
2301(a)(2)(A)-(D)(i)	33660	5671	33500(a)
2301(a)(2)(D)(ii)-(iv)	33665	5672 (1st para)	33510(a)
2301(b)	33670	5672 (2nd para)	33505
2301(c)(1)	33675	5673	33510(b)
2301(c)(2)	33660	5674	33515
2301(d)	33680	5675	33500(b)
2301(e)	33655	5700	33450
2301(f)	33695	5701	33455
2301(g)	33685	5701.5	33460
2301(h)	33690	5702	33465
2301(i)	33700	6400.5	25570

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
6403	25850	7256	33110
6440	25905	7260	29605
6450	25910	7290	31250
6451	25915	7332	31300
6452	25920	7350	25555
6454	25930	7370	29150(a)-(b)
6455	25925	7380	29900
6456	25900	7381	29905
6457	25935	7382	29910
6460	25940	7400	31050
6596.1(c)	25575(c)	7600	25005, 30605, 31100(e)-(f)
6850	36100	7660	28350(b)
6851	36150	7662	28350(a)
6852	36160	7702.1	25350, 27115, 28600, 34950
6854	36155	7704(c)	28850
6855	36165	7860	27755
6880	36200	7861	27760(a)-(d)
6881 (1st sent.)	36205	7861.1	27760(e)
6881 (2nd sent.)	36210	7861.2	27765
6882	36205	7861.3	27750
6883	36215	7861.4	27775
6884	36205	7861.5	27770
6885	36220	7862	27780
6895	36050	7862.5	27785
6896	36055	7863	27790
6900	25100	7925	28400
6901	25110	8046.1	26315
6902	25115	8051.4(a)	31100(a)-(d)
6903	25120	8051.4(b)	not cont'd
6910	25105(a), 25105(b)	8055	28405
6911	25105(a)	8120	28000
6912	25105(b)	8121	28005(a)-(c)
6920(a)	25125(a)	8122	28005(d)
6920(b)	25130	8123	28010
6921	25125(b)	8150.5	28565
6922	25145	8150.7 (1st sent.)	28555
6923	25140	8150.7 (2nd sent.)	28560
6924	25135	8154	28605
6930	25150	8180	25310(a)
6950	27600	8181	25310(b)
6952	27605	8182	25310(c)
6953	27610	8183	25315
6954	27615	8190	25305
6955	27620	8210.2	27850
6956	27625	8213	27860
7123	27160	8214	27865
7149.3	36400	8215	27870
7149.8	30700(a)-(c)	8217	27855
7149.9(a) (1st, 2nd sent.)	30955(a)	8218	27875
7149.9(a) (3rd sent.)	30950(a)	8219	27880
7149.9(a)(1) (1st sent.)	30960	8226	28410
7149.9(a)(1) (2nd sent.)	30950(b)-(c)	8231	27705
7149.9(a)(2)-(3)	30960	8232	28065
7149.9(b)-(d)	30955(b)-(d)	8232.5	28070

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
8233 (1st sent.)	28115	8252	33255
8233 (2nd sent.)	28195	8253	33355
8233.3	28130	8254	33200(a)-(e)
8233.4	28160	8254.7 ((1st-6th sent.)	33215
8233.5	28135	8254.7 (7th sent.)	33265
8233.8	28110	8257	33205
8233.9	28080	8258	33310(a)
8234(a)	28075	8259	33210
8234(b)	28200	8275	31655
8235	28125	8276(a)-(b)	31900
8236	28120	8276(c)	31760
8237	28135	8276.2(a)	31950
8238	28145(a)	8276.2(b)(1)	31955(a)
8238.1	28145(b)	8276.2(b)(2)(A)	31970
8239	28140(a)-(i)	8276.2(b)(2)(B)	31960
8239.1	28155(a)-(c)	8276.2(c) (1st, 3rd-6th sent.)	31965
8239.2	28060(b)	8276.2(c) (2nd sent.)	31955(b)
8239.6	28165	8276.2(d)	31975
8239.9	28150	8276.3(a)-(b)	31850
8240	28155(d)-(e)	8276.3(c)	31860
8241	28140(j)	8276.4(a) (1st sent.)	32200
8242	28090	8276.4(a) (2nd sent.)	32205
8243	28085	8276.4(a)(1)-(7)	32205
8244	28095	8276.4(b)	32210
8245	28100	8276.4(c)	32215
8245.5	28105	8276.4(d)	32220
8246(a)	28185(a)	8276.4(e)	32225
8246(b)	28185(b)	8276.4(f)	32230(a)
8246(c)	28185(c)	8276.4(g)	31710(a)
8246(d)	28185(e)	8276.4(h)	31710(b), 32235
8246.2(a)	28190	8276.5(a) (1st sent.)	32110
8246.2(b)	28185(d)	8276.5(a) (2nd sent.)	32115
8246.4	28170	8276.5(a)(1)-(2)	32120
8246.6	28175	8276.5(a)(3)	32125
8246.7	28180	8276.5(a)(4)	32130
8246.8	28060(a)	8276.5(a)(5)	32135
8247 (1st sent.)	28250	8276.5(b)	32140
8247 (2nd sent.)	28290	8276.5(c)	32230(b)
8247 (3rd sent.)	28280	8276.5(d)	32145
8247.1	28265	8276.5(e)-(f)	32150
8247.2 (1st sent.)	28275	8276.5(g)	32105
8247.2 (2nd, 3rd sent.)	28285	8276.5(h)	32100
8247.3	not cont'd	8276.5(i)	32155
8247.4	28295	8277	31905
8247.5(a)	28255	8278	31770
8247.5(b)	28270	8279	31755
8247.6	28305	8279.1(a)-(e)	31855
8247.7	28260	8279.1(f)	31860
8247.8	28300	8280	32600
8248	28055	8280.1(a)	32300
8250.5(a)	33300	8280.1(b)	32400
8250.5(b)	33315	8280.1(b)(1)-(2)	32405
8250.5(c)	33350	8280.1(b)(3)	32410
8251	33250	8280.1(b)(4)(A)	32415

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
8280.1(b)(4)(B).....	32420	8375.....	30255(b)
8280.1(b)(4)(C).....	32425	8376.....	30250
8280.1(b)(5).....	32430	8377.....	30260(b)
8280.1(b)(6).....	32435	8377.5.....	30260(a)
8280.1(c).....	32445	8378.....	30265
8280.1(e).....	not cont'd	8380.....	25800
8280.1(f).....	32440	8381.....	26405
8280.1(g)(1).....	32330	8382.....	25455(b), 30455(b)
8280.1(g)(2).....	32335	8383.5.....	25755
8280.1(h).....	32345, 32450	8384.....	25455(c), 30455(c)
8280.2(a)-(d).....	32325	8386.....	25455(a), 30455(a)
8280.2(e) (1st sent.).....	32320	8387.....	30460
8280.2(e) (2nd-4th sent.).....	32315	8388(a).....	28905
8280.2(f).....	32345	8388(b).....	28900
8280.3(a).....	32500	8388(c).....	28910(a)
8280.3(b).....	32510	8388(d).....	28910(b)
8280.3(c).....	32515	8388.5.....	29005
8280.3(d).....	32520	8389(a) (1st sent.).....	27000
8280.3(e).....	32525	8389(a) (2nd sent.).....	27005
8280.3(f).....	32530	8389(b).....	27010(a)
8280.3(g)(1).....	32540	8389(c).....	27010(b)
8280.3(g)(2).....	32535	8389(d).....	27015
8280.3(h).....	32545	8391.....	26550
8280.3(i).....	32550	8392.....	26555
8280.3(j).....	32560	8393(a).....	27205
8280.4(a).....	32305	8393(b).....	27210
8280.4(b).....	32345	8394.....	29555(a)
8280.5(a)-(e).....	32340	8394.5 (1st sent.).....	29555(b)
8280.5(f).....	32345	8394.5 (2nd sent.).....	29555(c)
8280.6(a).....	32310	8395.....	29455
8280.6(b).....	32555	8399.....	34800
8280.6(c).....	32505, 32560	8399.1.....	34805
8280.6(d).....	32345	8403(a).....	26310
8280.7.....	32610	8405.....	34105
8280.9.....	32605	8405.1.....	34110
8281.....	31715	8405.2.....	34115
8282.....	32650	8405.3.....	34120
8283.....	32055	8405.4.....	34125
8284(a) (1st sent.).....	32050	8411.....	27110
8284(a) (2nd sent.).....	32060(a)	8412.....	27105
8284(b)-(c).....	32660	8420.....	34850
8340.....	31400	8424.....	34855
8341.....	31410	8425(a).....	34860
8342.....	31425	8425(b).....	34865
8343.....	31415	8427.....	34870
8344.....	33900	8429 (1st sent.).....	34875
8345.....	34005	8429 (2nd sent.).....	34880
8346.....	31420	8429.5.....	34885
8370.....	25715, 27900, 29355	8429.7.....	34890
8371(a)-(b).....	25720	8430.....	29955
8371(c)-(d).....	27855	8431.....	30000(a)-(b)
8372.....	25805	8432.....	30000(c)
8373.....	26210	8435.....	26110
8374.....	30255(a), 30270	8475.....	31405

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
8490	32805	8834.1	27895
8491	32815	8834.5	31765
8492	32820	8842(a) (1st para)	34600(a)
8494(a)	26600	8842(a) (2nd para)	34600(b)
8494(b)	26605(a)	8842(b)	34605(a)
8494(c)	26605(b)	8842(c) (1st sent.)	34610
8494(d)	26610	8842(c) (2nd sent.)	34615
8494(e)	26615	8842(c) (3rd sent.)	34620
8494(f)	26620	8842(d)	34605(b)
8494(g)	26630	9001.7(k)	33260
8494(h)	26625	9001.8	27305
8500	30610	9010(a)	33300
8510	33005	9010(b)	33310(b)
8550 (1st sent.)	26850(a)	9010(c)-(e)	33305
8550 (2nd, 3rd sent.)	26855	9011(a)(1)	32050(a)
8550.5	26860	9011(a)(2)	32050(b)
8552(a) (1st sent.)	26850(b)	9011(a)(3)	32060(b)-(c)
8552(a) (2nd sent.)	26875, 26880	9011(b)	32655
8552(b)-(e)	26865	9011(c)	32065
8552.1	26900	9012(a)	31705
8552.2	26880	9012(b)	32050(c)
8552.3	26885	9015(a)	34510(a)
8552.4	26895	9015(b)	34510(c)
8552.5	26945	9023	26005
8552.6	26875	9024	32810
8552.7	26890	9053	32905, 33410
8552.8	26870	9054 (1st sent.)	34305(a)
8553	26955	9054 (2nd sent.)	34310
8554	26905	9054 (3rd sent.)	34305(c)
8555	26910	9054 (4th sent.)	34305(d)
8556	26915	9055	34305(b)
8557	26920	10000	29250
8558	26925	10001 (1st sent.)	29255
8558.1(a) (1st, 2nd sent.)	26930	10001 (2nd sent.)	29260
8558.1(a) (3rd sent.)	26935(c)	10002	29265
8558.1(b)	not cont'd	10003	29270(a)
8558.2	26935(a)-(b)	10004	29270(b)
8558.3	26935(d)	10005	29275
8559	26940	12000(b)(3)	30700(d)
8590	34455	12002(b)(5)	25725(b), 27890(b), 28710(b), 29360(b), 30010(b)
8591	34505	12003	25725(c), 27890(c), 28710(c), 29360 (c), 30010(c)
8593	34500	12006(a)(1)	29150(c)
8594	34550	12006(a)(2)	33200(f)
8595(a) (1st part)	34600(a)	12006.6	30855
8595(a) (2nd part)	34510(b)	12009	30850
8595(b)	34510(d)	12022.3	30860
8599	29050	12022.8(a)-(c)	30870
8599.3	29055	12022.8(d)-(f)	25320, 26700, 26950, 27905, 28570, 32700
8599.4	28950	12022.10	30865
8623(a), (b), (e)	25460, 25760, 30465	12157(c)(1)(B)	30875
8670	25725(a), 27890(a), 28710(a), 29360(a), 30010(a)	12157(c)(1)(C)	29150(d), 33200(g)
8756	25710, 27885, 28705, 30005		
8834	31700		

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